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**NONSUBSTANTIVE REVISION OF CERTAIN PROVISIONS OF
THE CODE OF CRIMINAL PROCEDURE, INCLUDING
CONFORMING AMENDMENTS**

CHAPTER 1058

H.B. No. 2931

AN ACT

relating to the nonsubstantive revision of certain provisions of the Code of Criminal Procedure, including conforming amendments.

Be it enacted by the Legislature of the State of Texas:

**ARTICLE 1. NONSUBSTANTIVE REVISION OF CERTAIN PROVISIONS
OF THE CODE OF CRIMINAL PROCEDURE**

SECTION 1.01. Title 1, Code of Criminal Procedure, is amended by adding Chapter 18A to read as follows:

**CHAPTER 18A. DETECTION, INTERCEPTION, AND USE OF WIRE,
ORAL, AND ELECTRONIC COMMUNICATIONS**

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18A.001. DEFINITIONS

Art. 18A.002. NONAPPLICABILITY

SUBCHAPTER B. APPLICATION FOR INTERCEPTION ORDER

Art. 18A.051. JUDGE OF COMPETENT JURISDICTION

Art. 18A.052. REQUEST FOR FILING OF INTERCEPTION APPLICATION

Art. 18A.053. JURISDICTION

Art. 18A.054. ALTERNATE JURISDICTION

Art. 18A.055. APPLICATION FOR INTERCEPTION ORDER

**SUBCHAPTER C. ISSUANCE OF INTERCEPTION ORDER AND RELATED
ORDERS**

Art. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE ISSUED

Art. 18A.102. JUDICIAL DETERMINATIONS REQUIRED FOR ISSUANCE OF INTERCEPTION ORDER

Art. 18A.103. CONTENTS OF INTERCEPTION ORDER

Art. 18A.104. LIMITATION ON COVERT ENTRY

Art. 18A.105. AUTHORITY TO ISSUE CERTAIN ANCILLARY ORDERS

Art. 18A.106. ORDER TO THIRD PARTY TO ASSIST WITH EXECUTION OF INTERCEPTION ORDER

Art. 18A.107. DURATION OF INTERCEPTION ORDER

Art. 18A.108. EXTENSION OF INTERCEPTION ORDER

Art. 18A.109. REPORT ON NEED FOR CONTINUED INTERCEPTION

Art. 18A.110. SUBSEQUENT CRIMINAL PROSECUTION RELATED TO INTERCEPTION ORDER

SUBCHAPTER D. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON

Art. 18A.151. REQUIREMENTS REGARDING INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON

Art. 18A.152. IMPLEMENTATION OF INTERCEPTION ORDER

Art. 18A.153. MOTION TO MODIFY OR QUASH INTERCEPTION ORDER

SUBCHAPTER E. EMERGENCY INSTALLATION AND USE OF INTERCEPTION DEVICE

Art. 18A.201. DEFINITIONS

Art. 18A.202. POSSESSION AND USE OF INTERCEPTION DEVICE IN EMERGENCY SITUATION

Art. 18A.203. CONSENT FOR EMERGENCY INTERCEPTION

Art. 18A.204. WRITTEN ORDER AUTHORIZING INTERCEPTION

Art. 18A.205. CERTAIN EVIDENCE NOT ADMISSIBLE

SUBCHAPTER F. DETECTION OF CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE IN CORRECTIONAL OR DETENTION FACILITY

Art. 18A.251. DEFINITION

Art. 18A.252. USE OF INTERCEPTION DEVICE BY INSPECTOR GENERAL

Art. 18A.253. REPORTING USE OF INTERCEPTION DEVICE

Art. 18A.254. NO EXPECTATION OF PRIVACY

SUBCHAPTER G. AGENCIES AND PERSONNEL AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICES

Art. 18A.301. DEPARTMENT OF PUBLIC SAFETY AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE

Art. 18A.302. TEXAS DEPARTMENT OF CRIMINAL JUSTICE AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE

Art. 18A.303. TEXAS JUVENILE JUSTICE DEPARTMENT AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE

SUBCHAPTER H. DISCLOSURE AND USE OF INTERCEPTED COMMUNICATIONS

Art. 18A.351. DISCLOSURE OR USE OF INTERCEPTED COMMUNICATIONS

Art. 18A.352. DISCLOSURE UNDER OATH

Art. 18A.353. PRIVILEGED COMMUNICATIONS

Art. 18A.354. DISCLOSURE OR USE OF INCIDENTALLY INTERCEPTED COMMUNICATIONS

Art. 18A.355. NOTICE AND DISCLOSURE OF INTERCEPTION APPLICATION, INTERCEPTION ORDER, AND INTERCEPTED COMMUNICATIONS

Art. 18A.356. NOTICE OF INTERCEPTION REQUIRED

Art. 18A.357. COMMUNICATIONS RECEIVED IN EVIDENCE

Art. 18A.358. SUPPRESSION OF CONTENTS OF INTERCEPTED COMMUNICATIONS

SUBCHAPTER I. USE AND DISPOSITION OF APPLICATIONS AND ORDERS

Art. 18A.401. SEALING OF APPLICATION OR ORDER

- Art. 18A.402. CUSTODY OF APPLICATIONS AND ORDERS
- Art. 18A.403. DISCLOSURE OF APPLICATION OR ORDER
- Art. 18A.404. DESTRUCTION OF APPLICATION OR ORDER

SUBCHAPTER J. CREATION, USE, AND DISPOSITION OF RECORDINGS

- Art. 18A.451. CREATION OF RECORDINGS
- Art. 18A.452. DUPLICATION OF RECORDINGS
- Art. 18A.453. SEALING AND CUSTODY OF RECORDINGS
- Art. 18A.454. DESTRUCTION OF RECORDINGS
- Art. 18A.455. PREREQUISITE FOR USE OR DISCLOSURE OF RECORDING IN CERTAIN PROCEEDINGS

SUBCHAPTER K. VIOLATION; SANCTIONS

- Art. 18A.501. CONTEMPT
- Art. 18A.502. RECOVERY OF CIVIL DAMAGES BY AGGRIEVED PERSON
- Art. 18A.503. ACTION BROUGHT BY FEDERAL OR STATE GOVERNMENT; INJUNCTION; PENALTIES
- Art. 18A.504. GOOD FAITH DEFENSE AVAILABLE
- Art. 18A.505. NO CAUSE OF ACTION

SUBCHAPTER L. REPORTS

- Art. 18A.551. REPORT OF INTERCEPTED COMMUNICATIONS BY JUDGE
- Art. 18A.552. REPORT OF INTERCEPTED COMMUNICATIONS BY PROSECUTOR
- Art. 18A.553. REPORT OF INTERCEPTED COMMUNICATIONS BY DEPARTMENT OF PUBLIC SAFETY

CHAPTER 18A. DETECTION, INTERCEPTION, AND USE OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18A.001. DEFINITIONS. In this chapter:

- (1) "Access," "computer," "computer network," "computer system," and "effective consent" have the meanings assigned by Section 33.01, Penal Code.
- (2) "Aggrieved person" means a person who was a party to an intercepted wire, oral, or electronic communication or a person against whom the interception was directed.
- (3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
- (4) "Communication common carrier" means a person engaged as a common carrier for hire in the transmission of wire or electronic communications.
- (5) "Computer trespasser" means a person who accesses a protected computer without effective consent of the owner and has no reasonable expectation of privacy in a communication transmitted to, through, or from the protected computer. The term does not include a person who accesses the protected computer under an existing contractual relationship with the owner or operator of the computer.
- (6) "Contents," with respect to a wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.
- (7) "Covert entry" means an entry that is made into or onto premises and that, if not authorized by a court order under this chapter, would violate the Penal Code.
- (8) "Department" means the Department of Public Safety of the State of Texas.
- (9) "Director" means:

(A) the public safety director of the department; or

(B) if the public safety director is absent or unable to serve, the assistant director of the department.

(10) "Electronic communication" means a transfer of any signs, signals, writing, images, sounds, data, or intelligence transmitted wholly or partly by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term does not include:

(A) a wire or oral communication;

(B) a communication made through a tone-only paging device; or

(C) a communication from a tracking device.

(11) "Electronic communications service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(12) "ESN reader," "pen register," and "trap and trace device" have the meanings assigned by Article 18B.001.

(13) "Intercept" means the aural or other acquisition of the contents of a wire, oral, or electronic communication through the use of an interception device.

(14) "Interception device" means an electronic, mechanical, or other device that may be used for the nonconsensual interception of wire, oral, or electronic communications. The term does not include a telephone or telegraph instrument, the equipment or a facility used for the transmission of electronic communications, or a component of the equipment or a facility used for the transmission of electronic communications if the instrument, equipment, facility, or component is:

(A) provided to a subscriber or user by a provider of a wire or electronic communications service in the ordinary course of the service provider's business and used by the subscriber or user in the ordinary course of the subscriber's or user's business;

(B) provided by a subscriber or user for connection to the facilities of a wire or electronic communications service for use in the ordinary course of the subscriber's or user's business;

(C) used by a communication common carrier in the ordinary course of the carrier's business; or

(D) used by an investigative or law enforcement officer in the ordinary course of the officer's duties.

(15) "Interception order" means an order authorizing the interception of a wire, oral, or electronic communication.

(16) "Investigative or law enforcement officer" means:

(A) an officer of this state or a political subdivision of this state who is authorized by law to investigate or make arrests for offenses described by Article 18A.101; or

(B) an attorney authorized by law to prosecute or participate in the prosecution of those offenses.

(17) "Judge of competent jurisdiction" means a judge described by Article 18A.051.

(18) "Mobile tracking device" has the meaning assigned by Article 18B.201.

(19) "Oral communication" means a communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation. The term does not include an electronic communication.

(20) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney, with jurisdiction in the county within an administrative judicial region described by Article 18A.053.

(21) "Protected computer" means a computer, computer network, or computer system that is:

(A) owned by a financial institution or governmental entity; or

(B) used by or for a financial institution or governmental entity, if conduct constituting an offense affects that use.

(22) “Residence” means a structure or the portion of a structure used as a person’s home or fixed place of habitation to which the person indicates an intent to return after a temporary absence.

(23) “User” means a person who uses an electronic communications service and is authorized by the service provider to use the service.

(24) “Wire communication” means an aural transfer made wholly or partly through the use of facilities for the transmission of communications by the aid of wire, cable, or other similar connection between the point of origin and the point of reception, including the use of the connection in a switching station, if those facilities are provided or operated by a person authorized to provide or operate the facilities for the transmission of communications as a communication common carrier. (Code Crim. Proc., Art. 18.20, Secs. 1(1), (2), (3), (4), (5), (6), (7) (part), (8), (9), (10), (11), (12), (13), (14), (15), (16), (18), (21), (24), (25), (26); New.)

Art. 18A.002. NONAPPLICABILITY. This chapter does not apply to conduct described as an affirmative defense under Section 16.02(c), Penal Code, except as otherwise specifically provided by that section. (Code Crim. Proc., Art. 18.20, Sec. 17.)

SUBCHAPTER B. APPLICATION FOR INTERCEPTION ORDER

Art. 18A.051. JUDGE OF COMPETENT JURISDICTION. (a) For purposes of this chapter, a judge of competent jurisdiction is a judge from the panel of nine active district judges with criminal jurisdiction who is appointed by the presiding judge of the court of criminal appeals under this article.

(b) The presiding judge of the court of criminal appeals, by order filed with the clerk of that court, shall appoint one district judge from each of the administrative judicial regions of this state to serve at the presiding judge’s pleasure as the judge of competent jurisdiction in that administrative judicial region.

(c) The presiding judge shall fill vacancies as those vacancies occur in the same manner. (Code Crim. Proc., Art. 18.20, Secs. 1(7), 3(a).)

Art. 18A.052. REQUEST FOR FILING OF INTERCEPTION APPLICATION. (a) The director may, based on written affidavits, request in writing that a prosecutor apply for an interception order.

(b) The head of a local law enforcement agency or, if the head of the agency is absent or unable to serve, the acting head of the local law enforcement agency may, based on written affidavits, request in writing that a prosecutor apply for an interception order.

(c) Before making a request under Subsection (b), the head of a local law enforcement agency must submit the request and supporting affidavits to the director. The director shall make a written finding as to whether the request and supporting affidavits establish that other investigative procedures have been attempted and have failed or those procedures reasonably appear unlikely to succeed or to be too dangerous if attempted, is feasible, is justifiable, and whether the department has the necessary resources available.

(d) A prosecutor may file the application requested under Subsection (b) only after a written positive finding by the director on all of the requirements provided by Subsection (c). (Code Crim. Proc., Art. 18.20, Sec. 6.)

Art. 18A.053. JURISDICTION. Except as provided by Article 18A.054, a judge of competent jurisdiction may act on an application for an interception order if any of the following is located in the administrative judicial region with respect to which the judge is appointed:

- (1) the site of:
 - (A) the proposed interception; or
 - (B) the interception device to be installed or monitored;
- (2) the communication device to be intercepted;
- (3) the billing, residential, or business address of the subscriber to the electronic communications service to be intercepted;

(4) the headquarters of the law enforcement agency that makes the request for or will execute the interception order; or

(5) the headquarters of the service provider. (Code Crim. Proc., Art. 18.20, Sec. 3(b).)

Art. 18A.054. ALTERNATE JURISDICTION. (a) An application for an interception order may be made to the judge of competent jurisdiction in an administrative judicial region adjacent to a region described by Article 18A.053 if:

(1) the judge of competent jurisdiction for the administrative judicial region described by Article 18A.053 is absent or unable to serve; or

(2) exigent circumstances exist.

(b) Exigent circumstances under Subsection (a)(2) do not include a denial of a previous application on the same facts and circumstances. (Code Crim. Proc., Art. 18.20, Secs. 3(b) (part), (c) (part).)

Art. 18A.055. APPLICATION FOR INTERCEPTION ORDER. (a) A prosecutor applying for an interception order must make the application in writing under oath to a judge of competent jurisdiction.

(b) An application must:

(1) identify the prosecutor making the application and state the prosecutor's authority to make the application;

(2) identify the officer requesting the application;

(3) include a complete statement of the facts and circumstances relied on by the prosecutor to justify the prosecutor's belief that an order should be issued, including:

(A) details about the particular offense that has been, is being, or is about to be committed;

(B) except as otherwise provided by this chapter, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(C) a particular description of the type of communication sought to be intercepted; and

(D) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(4) include a complete statement as to whether other investigative procedures have been attempted and have failed or why those procedures reasonably appear to be unlikely to succeed or to be too dangerous if attempted;

(5) include a statement of the period for which the interception is required to be maintained and, if the nature of the investigation indicates that the interception order should not automatically terminate when the described type of communication is first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur after the described type of communication is obtained;

(6) include a statement whether a covert entry will be necessary to properly and safely install wiretapping, electronic surveillance, or eavesdropping equipment and, if a covert entry is requested, a statement as to why a covert entry is necessary and proper under the facts of the particular investigation, including a complete statement as to whether other investigative techniques have been attempted and have failed or why those techniques reasonably appear to be unlikely to succeed or to be too dangerous if attempted or are not feasible under the circumstances or exigencies of time;

(7) include a complete statement of the facts concerning all applications known to the prosecutor that have been previously made to a judge for an interception order involving any persons, facilities, or places specified in the application and of the action taken by the judge on each application;

(8) if the application is for the extension of an order, include a statement providing

the results already obtained from the interception or a reasonable explanation of the failure to obtain results; and

(9) if the application is made under Article 18A.054, fully explain the circumstances justifying application under that article.

(c) In an ex parte hearing in chambers, the judge may require additional testimony or documentary evidence to support the application. The testimony or documentary evidence must be preserved as part of the application. (Code Crim. Proc., Art. 18.20, Secs. 3(c) (part), 8.)

SUBCHAPTER C. ISSUANCE OF INTERCEPTION ORDER AND RELATED ORDERS

Art. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE ISSUED. A judge of competent jurisdiction may issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

(1) a felony under any of the following provisions of the Health and Safety Code:

(A) Chapter 481, other than felony possession of marihuana;

(B) Chapter 483; or

(C) Section 485.032;

(2) an offense under any of the following provisions of the Penal Code:

(A) Section 19.02;

(B) Section 19.03;

(C) Section 20.03;

(D) Section 20.04;

(E) Chapter 20A;

(F) Chapter 34, if the criminal activity giving rise to the proceeds involves the commission of an offense under Title 5, Penal Code, or an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under Title 5;

(G) Section 38.11;

(H) Section 43.04;

(I) Section 43.05; or

(J) Section 43.26; or

(3) an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2). (Code Crim. Proc., Art. 18.20, Sec. 4.)

Art. 18A.102. JUDICIAL DETERMINATIONS REQUIRED FOR ISSUANCE OF INTERCEPTION ORDER. On receipt of an application under Subchapter B, the judge may issue an ex parte interception order, as requested or as modified; if the judge determines from the evidence submitted by the prosecutor that:

(1) there is probable cause to believe that a person is committing, has committed, or is about to commit a particular offense described by Article 18A.101;

(2) there is probable cause to believe that particular communications concerning that offense will be obtained through the interception;

(3) normal investigative procedures have been attempted and have failed or reasonably appear to be unlikely to succeed or to be too dangerous if attempted;

(4) there is probable cause to believe that the facilities from which or the place where the wire, oral, or electronic communications are to be intercepted is being used or is about to be used in connection with the commission of an offense or is leased to, listed in the name of, or commonly used by the person; and

(5) a covert entry is or is not necessary to properly and safely install the wiretapping, electronic surveillance, or eavesdropping equipment. (Code Crim. Proc., Art. 18.20, Sec.

9(a).)

Art. 18A.103. CONTENTS OF INTERCEPTION ORDER. (a) An interception order must specify:

- (1) the identity of the person, if known, whose communications are to be intercepted;
- (2) except as otherwise provided by this chapter, the nature and location of the communications facilities as to which or the place where authority to intercept is granted;
- (3) a particular description of the type of communication sought to be intercepted and a statement of the particular offense to which the communication relates;
- (4) the identity of the officer making the request and the identity of the prosecutor;
- (5) the period during which the interception is authorized, including a statement of whether the interception will automatically terminate when the described communication is first obtained; and
- (6) whether a covert entry or surreptitious entry is necessary to properly and safely install wiretapping, electronic surveillance, or eavesdropping equipment.

(b) Each interception order and extension of that order must provide that the authorization to intercept be executed as soon as practicable, be conducted in a way that minimizes the interception of communications not otherwise subject to interception under this chapter, and terminate on obtaining the authorized objective or within 30 days, whichever occurs sooner.

(c) For purposes of Subsection (b), if the intercepted communication is in code or a foreign language and an expert in that code or language is not reasonably available during the period of interception, minimization may be accomplished as soon as practicable after the interception. (Code Crim. Proc., Art. 18.20, Secs. 9(b), (d) (part).)

Art. 18A.104. LIMITATION ON COVERT ENTRY. (a) An interception order may not authorize a covert entry for the purpose of intercepting an oral communication unless:

(1) the judge, in addition to making the determinations required under Article 18A.102, determines:

(A) that:

(i) the premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of a pen register previously authorized in connection with the same investigation;

(ii) the premises into or onto which the covert entry is authorized or the person whose communications are to be obtained has been the subject of an interception of wire or electronic communications previously authorized in connection with the same investigation; and

(iii) the procedures under Subparagraphs (i) and (ii) have failed; or

(B) that the procedures under Paragraph (A) reasonably appear to be unlikely to succeed or to be too dangerous if attempted or are not feasible under the circumstances or exigencies of time; and

(2) the interception order, in addition to the matters required to be specified under Article 18A.103(a), specifies that:

(A) the covert entry is for the purpose of intercepting oral communications of two or more persons; and

(B) there is probable cause to believe that the persons described by Paragraph (A) are committing, have committed, or are about to commit a particular offense described by Article 18A.101.

(b) An interception order may not authorize a covert entry into a residence solely for the purpose of intercepting a wire or electronic communication. (Code Crim. Proc., Art. 18.20, Secs. 9(e), (f).)

Art. 18A.105. AUTHORITY TO ISSUE CERTAIN ANCILLARY ORDERS. An interception order may include an order to:

(1) install or use a pen register, ESN reader, trap and trace device, or mobile tracking device or similar equipment that combines the function of a pen register and trap and trace device; or

(2) disclose a stored communication, information subject to an administrative subpoena, or information subject to access under Chapter 18B. (Code Crim. Proc., Art. 18.20, Sec. 9(c) (part).)

Art. 18A.106. ORDER TO THIRD PARTY TO ASSIST WITH EXECUTION OF INTERCEPTION ORDER. (a) On request of the prosecutor applying for an interception order, the judge may issue a separate order directing a provider of a wire or electronic communications service, communication common carrier, landlord, custodian, or other person to provide to the prosecutor all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, carrier, landlord, custodian, or other person is providing the person whose communications are to be intercepted.

(b) A provider of a wire or electronic communications service, communication common carrier, landlord, custodian, or other person that provides facilities or technical assistance under an order described by Subsection (a) is entitled to compensation, at the prevailing rates, by the prosecutor for reasonable expenses incurred in providing the facilities or assistance. (Code Crim. Proc., Art. 18.20, Sec. 9(c) (part).)

Art. 18A.107. DURATION OF INTERCEPTION ORDER. An interception order may not authorize the interception of a communication for a period that:

- (1) is longer than is necessary to achieve the objective of the authorization; or
- (2) exceeds 30 days. (Code Crim. Proc., Art. 18.20, Sec. 9(d) (part).)

Art. 18A.108. EXTENSION OF INTERCEPTION ORDER. (a) A judge who issues an interception order may grant extensions of the order.

(b) An extension of an interception order may be granted only if:

- (1) an application for an extension is made in accordance with Article 18A.055; and
- (2) the judge makes the findings required by Article 18A.102.

(c) The period of extension may not:

- (1) be longer than the judge considers necessary to achieve the purposes for which the extension is granted; or
- (2) exceed 30 days. (Code Crim. Proc., Art. 18.20, Sec. 9(d) (part).)

Art. 18A.109. REPORT ON NEED FOR CONTINUED INTERCEPTION. (a) An interception order may require reports to the judge who issued the order that show any progress toward achieving the authorized objective and the need for continued interception.

(b) Reports under this article must be made at any interval the judge requires. (Code Crim. Proc., Art. 18.20, Sec. 9(g).)

Art. 18A.110. SUBSEQUENT CRIMINAL PROSECUTION RELATED TO INTERCEPTION ORDER. A judge who issues an interception order may not hear a criminal prosecution in which:

- (1) evidence derived from the interception may be used; or
- (2) the order may be an issue. (Code Crim. Proc., Art. 18.20, Sec. 9(h).)

SUBCHAPTER D. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON

Art. 18A.151. REQUIREMENTS REGARDING INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. The requirements of Articles 18A.055(b)(3)(B) and 18A.103(a)(2) relating to the specification of the facilities from which or the place where a communication is to be intercepted do not apply if:

(1) in the case of an application for an interception order that authorizes the interception of an oral communication:

(A) the application contains a complete statement as to why the specification is not practical and identifies the person committing or believed to be committing the offense and whose communications are to be intercepted; and

(B) a judge of competent jurisdiction finds that the specification is not practical; or

(2) in the case of an application for an interception order that authorizes the interception of a wire or electronic communication:

(A) the application identifies the person committing or believed to be committing the offense and whose communications are to be intercepted;

(B) a judge of competent jurisdiction finds that the prosecutor has made an adequate showing of probable cause to believe that the actions of the person identified in the application could have the effect of preventing interception from a specified facility; and

(C) the authority to intercept a wire or electronic communication under the interception order is limited to a period in which it is reasonable to presume that the person identified in the application will be reasonably proximate to the interception device. (Code Crim. Proc., Art. 18.20, Sec. 9A(a).)

Art. 18A.152. IMPLEMENTATION OF INTERCEPTION ORDER. A person implementing an interception order that authorizes the interception of an oral communication and that, as permitted by this subchapter, does not specify the facility from which or the place where a communication is to be intercepted may begin interception only after the person ascertains the place where the communication is to be intercepted. (Code Crim. Proc., Art. 18.20, Sec. 9A(b).)

Art. 18A.153. MOTION TO MODIFY OR QUASH INTERCEPTION ORDER. (a) provider of a wire or electronic communications service that receives an interception order that authorizes the interception of a wire or electronic communication and that, as permitted by this subchapter, does not specify the facility from which or the place where a communication is to be intercepted may move the court to modify or quash the order on the ground that the service provider's assistance with respect to the interception cannot be performed in a timely or reasonable manner.

(b) On notice to the state, the court shall decide the motion expeditiously. (Code Crim. Proc., Art. 18.20, Sec. 9A(c).)

SUBCHAPTER E. EMERGENCY INSTALLATION AND USE OF INTERCEPTION DEVICE

Art. 18A.201. DEFINITIONS. In this subchapter:

(1) "Immediate life-threatening situation" means a hostage, barricade, or other emergency situation in which a person unlawfully and directly:

(A) threatens another with death; or

(B) exposes another to a substantial risk of serious bodily injury.

(2) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who, as evidenced by the submission of appropriate documentation to the Texas Commission on Law Enforcement:

(A) receives each year a minimum of 40 hours of training in hostage and barricade suspect situations; or

(B) has received a minimum of 24 hours of training on kidnapping investigations and is:

(i) the sheriff of a county with a population of 3.3 million or more or the sheriff's designee; or

(ii) the police chief of a police department in a municipality with a population of 500,000 or more or the chief's designee. (Code Crim. Proc., Art. 18.20, Secs. 1(22), (23).)

Art. 18A.202. POSSESSION AND USE OF INTERCEPTION DEVICE IN EMERGENCY SITUATION. (a) The prosecutor in a county in which an interception device is to be installed or used shall designate in writing each peace officer in the county, other than a commissioned officer of the department, who is:

(1) a member of a law enforcement unit specially trained to respond to and deal with life-threatening situations; and

(2) authorized to possess an interception device and responsible for the installation, operation, and monitoring of the device in an immediate life-threatening situation.

(b) A peace officer designated under Subsection (a) or Article 18A.301(c) may possess, install, operate, or monitor an interception device if the officer:

(1) reasonably believes an immediate life-threatening situation exists that:

(A) is within the territorial jurisdiction of the officer or another officer the officer is assisting; and

(B) requires interception of communications before an interception order can, with due diligence, be obtained under this subchapter;

(2) reasonably believes there are sufficient grounds under this subchapter on which to obtain an interception order; and

(3) before beginning the interception, obtains oral or written consent to the interception from:

(A) a judge of competent jurisdiction;

(B) a district judge for the county in which the device will be installed or used; or

(C) a judge or justice of a court of appeals or of a higher court.

(c) If a peace officer installs or uses an interception device under Subsection (b), the officer shall:

(1) promptly report the installation or use to the prosecutor in the county in which the device is installed or used; and

(2) within 48 hours after the installation is complete or the interception begins, whichever occurs first, obtain a written interception order from a judge of competent jurisdiction.

(d) A peace officer may certify to a communication common carrier that the officer is acting lawfully under this subchapter. (Code Crim. Proc., Art. 18.20, Secs. 8A(a), (b), (d), (g).)

Art. 18A.203. CONSENT FOR EMERGENCY INTERCEPTION. (a) An official described by Article 18A.202(b)(3) may give oral or written consent to the interception of communications under this subchapter to provide evidence of the commission of a felony, or of a threat, attempt, or conspiracy to commit a felony, in an immediate life-threatening situation.

(b) Oral or written consent given under this subchapter expires on the earlier of:

(1) 48 hours after the grant of consent; or

(2) the conclusion of the emergency justifying the interception. (Code Crim. Proc., Art. 18.20, Sec. 8A(c).)

Art. 18A.204. WRITTEN ORDER AUTHORIZING INTERCEPTION. (a) A judge of competent jurisdiction under Article 18A.051 or under Article 18A.202(b) may issue a written interception order under this subchapter during the 48-hour period prescribed by Article 18A.202(c)(2).

(b) A written interception order under this subchapter expires on the earlier of:

(1) the 30th day after the date of execution of the order; or

(2) the conclusion of the emergency that initially justified the interception.

(c) If an interception order is denied or is not issued within the 48-hour period, the officer shall terminate use of and remove the interception device promptly on the earlier of:

(1) the denial;

(2) the end of the emergency that initially justified the interception; or

(3) the expiration of 48 hours. (Code Crim. Proc., Art. 18.20, Sec. 8A(e).)

Art. 18A.205. CERTAIN EVIDENCE NOT ADMISSIBLE. The state may not use as evidence in a criminal proceeding information gained through the use of an interception device installed under this subchapter if authorization for the device is not sought or is sought but not obtained. (Code Crim. Proc., Art. 18.20, Secs. 8A(b) (part), (f).)

SUBCHAPTER F. DETECTION OF CELLULAR TELEPHONE OR OTHER
WIRELESS COMMUNICATIONS DEVICE IN CORRECTIONAL OR DETENTION
FACILITY

Art. 18A.251. DEFINITION. In this subchapter, "correctional facility" means:

- (1) a place described by Section 1.07(a)(14), Penal Code; or
- (2) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code. (Code Crim. Proc., Art. 18.20, Sec. 8B(a).)

Art. 18A.252. USE OF INTERCEPTION DEVICE BY INSPECTOR GENERAL. (a) Notwithstanding any other provision of this chapter or Chapter 18B, the office of inspector general of the Texas Department of Criminal Justice may:

- (1) without a warrant, use an interception device to detect the presence or use of a cellular telephone or other wireless communications device in a correctional facility;
- (2) without a warrant, intercept, monitor, detect, or, as authorized by applicable federal laws and regulations, prevent the transmission of a communication through a cellular telephone or other wireless communications device in a correctional facility; and
- (3) use, to the extent authorized by law, any information obtained under Subdivision (2), including the contents of an intercepted communication, in a criminal or civil proceeding before a court or other governmental agency or entity.

(b) When using an interception device under Subsection (a), the office of inspector general shall minimize the impact of the device on a communication that is not reasonably related to the detection of the presence or use of a cellular telephone or other wireless communications device in a correctional facility. (Code Crim. Proc., Art. 18.20, Secs. 8B(b), (d).)

Art. 18A.253. REPORTING USE OF INTERCEPTION DEVICE. Not later than the 30th day after the date on which the office of inspector general uses an interception device under Article 18A.252(a), the inspector general shall report the use of the device to:

- (1) a prosecutor with jurisdiction in the county in which the device was used; or
- (2) the special prosecution unit established under Subchapter E, Chapter 41, Government Code, if that unit has jurisdiction in the county in which the device was used. (Code Crim. Proc., Art. 18.20, Sec. 8B(c).)

Art. 18A.254. NO EXPECTATION OF PRIVACY. (a) A person confined in a correctional facility does not have an expectation of privacy with respect to the possession or use of a cellular telephone or other wireless communications device located on the premises of the facility.

(b) A person confined in a correctional facility, and any person with whom the confined person communicates through the use of a cellular telephone or other wireless communications device, does not have an expectation of privacy with respect to the contents of a communication transmitted by the telephone or device. (Code Crim. Proc., Art. 18.20, Sec. 8B(e).)

SUBCHAPTER G. AGENCIES AND PERSONNEL AUTHORIZED TO POSSESS AND
USE INTERCEPTION DEVICES

Art. 18A.301. DEPARTMENT OF PUBLIC SAFETY AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE. (a) Except as otherwise provided by this subchapter and Subchapters E and F, only the department is authorized by this chapter to own, possess, install, operate, or monitor an interception device.

(b) An investigative or law enforcement officer or other person may assist the depart-

ment in the operation and monitoring of an interception of wire, oral, or electronic communications if the officer or other person:

- (1) is designated by the director for that purpose; and
- (2) acts in the presence and under the direction of a commissioned officer of the department.

(c) The director shall designate in writing the commissioned officers of the department who are responsible for the possession, installation, operation, and monitoring of interception devices for the department. (Code Crim. Proc., Art. 18.20, Secs. 5(a), (b).)

Art. 18A.302. TEXAS DEPARTMENT OF CRIMINAL JUSTICE AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE. (a) The Texas Department of Criminal Justice may own an interception device for a use or purpose authorized by Section 500.008, Government Code.

(b) The inspector general of the Texas Department of Criminal Justice, a commissioned officer of that office, or a person acting in the presence and under the direction of the commissioned officer may possess, install, operate, or monitor the interception device as provided by Section 500.008, Government Code. (Code Crim. Proc., Art. 18.20, Sec. 5(c).)

Art. 18A.303. TEXAS JUVENILE JUSTICE DEPARTMENT AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE. (a) The Texas Juvenile Justice Department may own an interception device for a use or purpose authorized by Section 242.103, Human Resources Code.

(b) The inspector general of the Texas Juvenile Justice Department, a commissioned officer of that office, or a person acting in the presence and under the direction of the commissioned officer may possess, install, operate, or monitor the interception device as provided by Section 242.103, Human Resources Code. (Code Crim. Proc., Art. 18.20, Sec. 5(d).)

SUBCHAPTER H. DISCLOSURE AND USE OF INTERCEPTED COMMUNICATIONS

Art. 18A.351. DISCLOSURE OR USE OF INTERCEPTED COMMUNICATIONS. An investigative or law enforcement officer who, by means authorized by this chapter, obtains knowledge of the contents of a wire, oral, or electronic communication or evidence derived from the communication may:

- (1) use the contents or evidence to the extent the use is appropriate to the proper performance of the officer's official duties; or
- (2) disclose the contents or evidence to another investigative or law enforcement officer, including a law enforcement officer or agent of the United States or of another state, to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure. (Code Crim. Proc., Art. 18.20, Secs. 7(a), (b).)

Art. 18A.352. DISCLOSURE UNDER OATH. A person who receives, by means authorized by this chapter, information concerning a wire, oral, or electronic communication or evidence derived from a communication intercepted in accordance with this chapter may disclose the contents of that communication or evidence while giving testimony under oath in any proceeding held under the authority of the United States, this state, or a political subdivision of this state. (Code Crim. Proc., Art. 18.20, Sec. 7(c).)

Art. 18A.353. PRIVILEGED COMMUNICATIONS. (a) An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, this chapter does not lose its privileged character.

(b) Evidence derived from a privileged communication described by Subsection (a) against a party to that communication is privileged. (Code Crim. Proc., Art. 18.20, Sec. 7(d).)

Art. 18A.354. DISCLOSURE OR USE OF INCIDENTALLY INTERCEPTED COMMUNICATIONS. (a) This article applies only to the contents of and evidence derived from wire, oral, or electronic communications that:

(1) are intercepted by an investigative or law enforcement officer while engaged in intercepting wire, oral, or electronic communications in a manner authorized by this chapter; and

(2) relate to offenses other than those specified by the interception order.

(b) The contents of and evidence derived from a communication described by Subsection (a) may be disclosed or used as provided by Article 18A.351.

(c) The contents of and evidence derived from a communication described by Subsection (a) may be used under Article 18A.352 when authorized by a judge of competent jurisdiction if the judge finds, on subsequent application, that the contents were otherwise intercepted in accordance with this chapter.

(d) An application under Subsection (c) must be made as soon as practicable. (Code Crim. Proc., Art. 18.20, Sec. 7(e).)

Art. 18A.355. NOTICE AND DISCLOSURE OF INTERCEPTION APPLICATION, INTERCEPTION ORDER, AND INTERCEPTED COMMUNICATIONS. (a) Within a reasonable period but not later than the 90th day after the date an application for an interception order is denied or after the date an interception order or the last extension, if any, expires, the judge who granted or denied the application shall cause to be served on each person named in the order or application and any other party to an intercepted communication, if any, an inventory that must include notice of:

(1) the application or the issuance of the order;

(2) the date of denial of the application, or the date of the issuance of the order and the authorized interception period; and

(3) whether during any authorized interception period wire, oral, or electronic communications were intercepted.

(b) The judge may, on motion, make available for inspection to a person or the person's counsel any portion of an intercepted communication, application, or order that the judge determines to disclose to that person in the interest of justice.

(c) On an ex parte showing of good cause to the judge, the serving of the inventory required under Subsection (a) may be postponed.

(d) Evidence derived from an order under this chapter may not be disclosed in a trial until after the inventory has been served. (Code Crim. Proc., Art. 18.20, Sec. 13.)

Art. 18A.356. NOTICE OF INTERCEPTION REQUIRED. (a) The contents of an intercepted wire, oral, or electronic communication or evidence derived from the communication may not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not later than the 10th day before the date of the trial, hearing, or other proceeding, has been provided with a copy of the interception order and application under which the interception was authorized.

(b) The judge may waive the 10-day period described by Subsection (a) on a finding that:

(1) it is not possible to provide the party with the information 10 days before the trial, hearing, or proceeding; and

(2) the party will not be prejudiced by the delay in receiving the information. (Code Crim. Proc., Art. 18.20, Sec. 14(a).)

Art. 18A.357. COMMUNICATIONS RECEIVED IN EVIDENCE. (a) The contents of an intercepted communication and evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, this state, or a political subdivision of this state unless:

(1) the communication was intercepted in violation of this chapter, Section 16.02, Penal Code, or federal law; or

(2) the disclosure of the contents of the communication or evidence derived from the communication would violate a law described by Subdivision (1).

(b) The contents of an intercepted communication and evidence derived from the communication may be received in a civil trial, hearing, or other proceeding only if the civil trial, hearing, or other proceeding arises out of a violation of a penal law.

(c) This article does not prohibit the use or admissibility of the contents of an intercepted communication or evidence derived from the communication if the communication was intercepted in a jurisdiction outside this state in compliance with the law of that jurisdiction. (Code Crim. Proc., Art. 18.20, Sec. 2.)

Art. 18A.358. SUPPRESSION OF CONTENTS OF INTERCEPTED COMMUNICATIONS. (a) An aggrieved person charged with an offense in a trial, hearing, or proceeding in or before a court, department, officer, agency, regulatory body, or other authority of the United States, this state, or a political subdivision of this state may move to suppress the contents of an intercepted wire, oral, or electronic communication or evidence derived from the communication on the ground that:

- (1) the communication was unlawfully intercepted;
- (2) the interception order is insufficient on its face; or
- (3) the interception was not made in conformity with the interception order.

(b) A person identified by a party to an intercepted wire, oral, or electronic communication during the course of that communication may move to suppress the contents of the communication on:

- (1) a ground provided under Subsection (a); or
- (2) the ground that the harm to the person resulting from the person's identification in court exceeds the value to the prosecution of the disclosure of the contents.

(c) The motion to suppress must be made before the trial, hearing, or proceeding unless:

- (1) there was not an opportunity to make the motion; or
- (2) the aggrieved person was not aware of the grounds of the motion.

(d) The hearing on the motion to suppress shall be held in camera on the written request of the aggrieved person.

(e) If the motion to suppress is granted, the contents of the intercepted wire, oral, or electronic communication and evidence derived from the communication shall be treated as having been obtained in violation of this chapter.

(f) The judge, on the filing of the motion to suppress by the aggrieved person, shall make available to the aggrieved person or the person's counsel for inspection any portion of the intercepted communication or evidence derived from the communication that the judge determines to make available in the interest of justice.

(g) A judge of this state, on hearing a pretrial motion regarding conversations intercepted by wire in accordance with this chapter, or who otherwise becomes informed that there exists on such an intercepted wire, oral, or electronic communication identification of a specific individual who is not a suspect or a party to the subject of interception shall:

- (1) give notice and an opportunity to be heard on the matter of suppression of references to that individual if identification is sufficient to give notice; or
- (2) suppress references to that individual if identification is:
 - (A) sufficient to potentially cause embarrassment or harm that outweighs the probative value, if any, of the mention of that individual; and
 - (B) insufficient to require the notice under Subdivision (1). (Code Crim. Proc., Art. 18.20, Secs. 14(b), (c), (d), (e).)

SUBCHAPTER I. USE AND DISPOSITION OF APPLICATIONS AND ORDERS

Art. 18A.401. SEALING OF APPLICATION OR ORDER. The judge shall seal each application made and order issued under this chapter. (Code Crim. Proc., Art. 18.20, Sec.

11 (part).)

Art. 18A.402. CUSTODY OF APPLICATIONS AND ORDERS. Custody of applications and orders issued under this chapter shall be wherever the judge directs. (Code Crim. Proc., Art. 18.20, Sec. 11 (part).)

Art. 18A.403. DISCLOSURE OF APPLICATION OR ORDER. An application made or order issued under this chapter may be disclosed only on a showing of good cause before a judge of competent jurisdiction. (Code Crim. Proc., Art. 18.20, Sec. 11 (part).)

Art. 18A.404. DESTRUCTION OF APPLICATION OR ORDER. An application made or order issued under this chapter may be destroyed only on or after the 10th anniversary of the date the application or order was sealed and only if the judge of competent jurisdiction for the administrative judicial region in which the application was made or the order was issued orders the destruction. (Code Crim. Proc., Art. 18.20, Sec. 11 (part).)

SUBCHAPTER J. CREATION, USE, AND DISPOSITION OF RECORDINGS

Art. 18A.451. CREATION OF RECORDINGS. The contents of a wire, oral, or electronic communication intercepted by means authorized by this chapter shall be recorded on tape, wire, or other comparable device in a way that protects the recording from editing or other alterations. (Code Crim. Proc., Art. 18.20, Sec. 10(a).)

Art. 18A.452. DUPLICATION OF RECORDINGS. Recordings under Article 18A.451 may be duplicated for use or disclosure under Article 18A.351 for investigations. (Code Crim. Proc., Art. 18.20, Sec. 10(c).)

Art. 18A.453. SEALING AND CUSTODY OF RECORDINGS. (a) Immediately on the expiration of the period of an interception order and all extensions, if any, the recordings under Article 18A.451 shall be:

- (1) made available to the judge issuing the order; and
- (2) sealed under the judge's directions.

(b) Custody of the recordings shall be wherever the judge orders. (Code Crim. Proc., Art. 18.20, Sec. 10(b) (part).)

Art. 18A.454. DESTRUCTION OF RECORDINGS. A recording under Article 18A.451 may be destroyed only on or after the 10th anniversary of the date of expiration of the interception order and the last extension, if any, and only if the judge of competent jurisdiction for the administrative judicial region in which the interception was authorized orders the destruction. (Code Crim. Proc., Art. 18.20, Sec. 10(b) (part).)

Art. 18A.455. PREREQUISITE FOR USE OR DISCLOSURE OF RECORDING IN CERTAIN PROCEEDINGS. The presence of the seal required by Article 18A.453(a) or a satisfactory explanation of the seal's absence is a prerequisite for the use or disclosure of the contents of a wire, oral, or electronic communication or evidence derived from the communication under Article 18A.352. (Code Crim. Proc., Art. 18.20, Sec. 10(d).)

SUBCHAPTER K. VIOLATION; SANCTIONS

Art. 18A.501. CONTEMPT. A violation of Subchapter I or J may be punished as contempt of court. (Code Crim. Proc., Art. 18.20, Sec. 12.)

Art. 18A.502. RECOVERY OF CIVIL DAMAGES BY AGGRIEVED PERSON. A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter or Chapter 16, Penal Code:

(1) has a civil cause of action against any person who intercepts, discloses, or uses or solicits another person to intercept, disclose, or use the communication; and

(2) is entitled to recover from the person:

(A) actual damages but not less than liquidated damages computed at a rate of \$100 for each day the violation occurs or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorney's fees and other litigation costs reasonably incurred. (Code

Crim. Proc., Art. 18.20, Sec. 16(a).)

Art. 18A.503. ACTION BROUGHT BY FEDERAL OR STATE GOVERNMENT; INJUNCTION; PENALTIES. (a) A person is subject to suit by the federal or state government in a court of competent jurisdiction for appropriate injunctive relief if the person engages in conduct that:

(1) constitutes an offense under Section 16.05, Penal Code, but is not for a tortious or illegal purpose or for the purpose of direct or indirect commercial advantage or private commercial gain; and

(2) involves a radio communication that is:

(A) transmitted on frequencies allocated under Subpart D of Part 74 of the rules of the Federal Communications Commission; and

(B) not scrambled or encrypted.

(b) The attorney general or the county or district attorney of the county in which the conduct described by Subsection (a) is occurring may file suit under that subsection on behalf of the state.

(c) A defendant is liable for a civil penalty of \$500 if it is shown at the trial of the civil suit brought under Subsection (a) that the defendant has been:

(1) convicted of an offense under Section 16.05, Penal Code; or

(2) found liable in a civil action brought under Article 18A.502.

(d) Each violation of an injunction ordered under Subsection (a) is punishable by a fine of \$500. (Code Crim. Proc., Art. 18.20, Secs. 16(c), (d), (e), (f).)

Art. 18A.504. GOOD FAITH DEFENSE AVAILABLE. A good faith reliance on a court order or legislative authorization constitutes a complete defense to an action brought under Article 18A.502 or 18A.503. (Code Crim. Proc., Art. 18.20, Sec. 16(b).)

Art. 18A.505. NO CAUSE OF ACTION. A computer trespasser or a user, aggrieved person, subscriber, or customer of a communication common carrier or provider of an electronic communications service does not have a cause of action against the carrier or service provider, the officers, employees, or agents of the carrier or service provider, or other specified persons for providing information, facilities, or assistance as required by a good faith reliance on:

(1) legislative authority; or

(2) a court order, warrant, subpoena, or certification under this chapter. (Code Crim. Proc., Art. 18.20, Sec. 16(g).)

SUBCHAPTER L. REPORTS

Art. 18A.551. REPORT OF INTERCEPTED COMMUNICATIONS BY JUDGE. (a) Within 30 days after the date an interception order or the last extension, if any, expires or after the denial of an interception order, the issuing or denying judge shall report to the Administrative Office of the United States Courts:

(1) the fact that an order or extension was applied for;

(2) the kind of order or extension applied for;

(3) the fact that the order or extension was granted as applied for, was modified, or was denied;

(4) the period of interceptions authorized by the order and the number and duration of any extensions of the order;

(5) the offense specified in the order or application or extension;

(6) the identity of the requesting officer and the prosecutor; and

(7) the nature of the facilities from which or the place where communications were to be intercepted.

(b) A judge required to file a report under this article shall forward a copy of the

report to the director. (Code Crim. Proc., Art. 18.20, Secs. 15(a), (c) (part).)

Art. 18A.552. REPORT OF INTERCEPTED COMMUNICATIONS BY PROSECUTOR. (a) In January of each year each prosecutor shall report to the Administrative Office of the United States Courts the following information for the preceding calendar year:

(1) the information required by Article 18A.551(a) with respect to each application for an interception order or extension made;

(2) a general description of the interceptions made under each order or extension, including:

(A) the approximate nature and frequency of incriminating communications intercepted;

(B) the approximate nature and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted; and

(D) the approximate nature, amount, and cost of the personnel and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under each order or extension and the offenses for which the arrests were made;

(4) the number of trials resulting from interceptions;

(5) the number of motions to suppress made with respect to interceptions and the number granted or denied;

(6) the number of convictions resulting from interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and

(7) the information required by Subdivisions (2) through (6) with respect to orders or extensions obtained.

(b) A prosecutor required to file a report under this article shall forward a copy of the report to the director. (Code Crim. Proc., Art. 18.20, Secs. 15(b), (c) (part).)

Art. 18A.553. REPORT OF INTERCEPTED COMMUNICATIONS BY DEPARTMENT OF PUBLIC SAFETY. (a) On or before March 1 of each year, the director shall submit a report of all intercepts conducted under this chapter and terminated during the preceding calendar year to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the chair of the senate jurisprudence committee; and

(5) the chair of the house of representatives criminal jurisprudence committee.

(b) The report must include:

(1) the reports of judges and prosecuting attorneys forwarded to the director as required by Articles 18A.551(b) and 18A.552(b);

(2) the number of department personnel authorized to possess, install, or operate an interception device;

(3) the number of department and other law enforcement personnel who participated or engaged in the seizure of intercepts under this chapter during the preceding calendar year; and

(4) the total cost to the department of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, personnel, and expenses incurred as compensation for use of facilities or technical assistance provided to the department. (Code Crim. Proc., Art. 18.20, Sec. 15(c) (part).)

SECTION 1.02. Title 1, Code of Criminal Procedure, is amended by adding Chapter 18B to read as follows:

**CHAPTER 18B. INSTALLATION AND USE OF TRACKING EQUIPMENT;
ACCESS TO COMMUNICATIONS**

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18B.001. DEFINITIONS

**SUBCHAPTER B. APPLICATION FOR ORDER AUTHORIZING INSTALLA-
TION AND USE OF EQUIPMENT**

**Art. 18B.051. REQUIREMENTS REGARDING REQUEST FOR AND FILING OF AP-
PLICATION**

Art. 18B.052. JURISDICTION

Art. 18B.053. APPLICATION REQUIREMENTS

**SUBCHAPTER C. ORDER AUTHORIZING INSTALLATION AND USE OF
EQUIPMENT**

**Art. 18B.101. ORDER AUTHORIZING INSTALLATION AND USE OF PEN REGIS-
TER, ESN READER, OR SIMILAR EQUIPMENT**

**Art. 18B.102. ORDER AUTHORIZING INSTALLATION AND USE OF TRAP AND
TRACE DEVICE OR SIMILAR EQUIPMENT**

Art. 18B.103. COMPENSATION FOR CARRIER OR SERVICE PROVIDER

Art. 18B.104. DURATION OF ORDER

Art. 18B.105. SEALING RECORDS OF APPLICATION AND ORDER

**SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN
EQUIPMENT**

**Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN REGISTER OR
TRAP AND TRACE DEVICE**

Art. 18B.152. ORDER AUTHORIZING EMERGENCY INSTALLATION AND USE

Art. 18B.153. ADMISSIBILITY OF EVIDENCE OBTAINED

SUBCHAPTER E. MOBILE TRACKING DEVICES.

Art. 18B.201. DEFINITION

**Art. 18B.202. ORDER AUTHORIZING INSTALLATION AND USE OF MOBILE
TRACKING DEVICE**

Art. 18B.203. JURISDICTION

**Art. 18B.204. NOTIFICATION OF JUDGE FOLLOWING ACTIVATION OF MOBILE
TRACKING DEVICE**

Art. 18B.205. DURATION OF ORDER

Art. 18B.206. REMOVAL OF DEVICE

Art. 18B.207. NONAPPLICABILITY

SUBCHAPTER F. LAW ENFORCEMENT POWERS AND DUTIES

Art. 18B.251. POLICY REQUIRED

**Art. 18B.252. PEACE OFFICERS AUTHORIZED TO POSSESS, INSTALL, OPERATE,
OR MONITOR EQUIPMENT**

Art. 18B.253. LIMITATION: PEN REGISTERS

**Art. 18B.254. APPLICATION OR ORDER NOT REQUIRED FOR CERTAIN
SEARCHES**

SUBCHAPTER G. OVERSIGHT

Art. 18B.301. COMPLIANCE AUDIT

Art. 18B.302. REPORT OF EXPENDITURES

**SUBCHAPTER H. ACCESS TO STORED COMMUNICATIONS AND OTHER
STORED CUSTOMER DATA**

Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER DATA

Art. 18B.352. COURT ORDER FOR GOVERNMENT ACCESS TO STORED CUSTOMER DATA

Art. 18B.353. WARRANT ISSUED IN THIS STATE: APPLICABILITY

Art. 18B.354. WARRANT ISSUED IN THIS STATE: APPLICATION AND ISSUANCE OF WARRANT

Art. 18B.355. WARRANT ISSUED IN THIS STATE: EXECUTION OF WARRANT

Art. 18B.356. WARRANT ISSUED IN THIS STATE: COMPLIANCE WITH WARRANT

Art. 18B.357. WARRANT ISSUED IN THIS STATE: AUTHENTICATION OF RECORDS BY SERVICE PROVIDER

Art. 18B.358. WARRANT ISSUED IN ANOTHER STATE

Art. 18B.359. GOVERNMENT ACCESS TO CERTAIN STORED CUSTOMER DATA WITHOUT LEGAL PROCESS

**SUBCHAPTER I. BACKUP PRESERVATION OF ELECTRONIC
CUSTOMER DATA**

Art. 18B.401. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA

Art. 18B.402. NOTICE TO SUBSCRIBER OR CUSTOMER

Art. 18B.403. RELEASE OF COPY OF ELECTRONIC CUSTOMER DATA

Art. 18B.404. DESTRUCTION OF COPY OF ELECTRONIC CUSTOMER DATA

Art. 18B.405. REQUEST FOR COPY OF ELECTRONIC CUSTOMER DATA BY AUTHORIZED PEACE OFFICER

Art. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE COURT ORDER

SUBCHAPTER J. PRODUCTION OF CERTAIN BUSINESS RECORDS

Art. 18B.451. SUBPOENA AUTHORITY

Art. 18B.452. REPORT OF ISSUANCE OF SUBPOENA

Art. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION AND USE OF EQUIPMENT

SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

Art. 18B.501. PRECLUSION OF NOTIFICATION

Art. 18B.502. DISCLOSURE BY SERVICE PROVIDER PROHIBITED

Art. 18B.503. REIMBURSEMENT OF COSTS

SUBCHAPTER L. REMEDIES

Art. 18B.551. CAUSE OF ACTION

Art. 18B.552. NO CAUSE OF ACTION

Art. 18B.553. EXCLUSIVITY OF REMEDIES

CHAPTER 18B. INSTALLATION AND USE OF TRACKING EQUIPMENT; ACCESS TO COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18B.001. DEFINITIONS. In this chapter:

(1) "Authorized peace officer" means:

(A) a sheriff or deputy sheriff;

- (B) a constable or deputy constable;
 - (C) a marshal or police officer of a municipality;
 - (D) a ranger or officer commissioned by the Public Safety Commission or the director of the department;
 - (E) an investigator of a prosecutor's office;
 - (F) a law enforcement agent of the Texas Alcoholic Beverage Commission;
 - (G) a law enforcement officer commissioned by the Parks and Wildlife Commission;
 - (H) an enforcement officer appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;
 - (I) an investigator commissioned by the attorney general under Section 402.009, Government Code; or
 - (J) a member of an arson investigating unit commissioned by a municipality, a county, or the state.
- (2) "Communication common carrier," "electronic communication," "electronic communications service," "user," and "wire communication" have the meanings assigned by Article 18A.001.
- (3) "Department" means the Department of Public Safety of the State of Texas.
- (4) "Designated law enforcement office or agency" means:
- (A) the sheriff's department of a county with a population of 3.3 million or more;
 - (B) a police department in a municipality with a population of 500,000 or more; or
 - (C) the office of inspector general of the Texas Department of Criminal Justice.
- (5) "Domestic entity" has the meaning assigned by Section 1.002, Business Organizations Code.
- (6) "Electronic communications system" means:
- (A) a wire, radio, electromagnetic, photo-optical, or photoelectronic facility for the transmission of wire or electronic communications; and
 - (B) any computer facility or related electronic equipment for the electronic storage of wire or electronic communications.
- (7) "Electronic customer data" means data or records that:
- (A) are in the possession, care, custody, or control of a provider of an electronic communications service or provider of a remote computing service; and
 - (B) contain:
 - (i) information revealing the identity of customers of the applicable service;
 - (ii) information about a customer's use of the applicable service;
 - (iii) information that identifies the recipient or destination of a wire or electronic communication sent to or by a customer;
 - (iv) the content of a wire or electronic communication sent to or by a customer; and
 - (v) any data stored with the applicable service provider by or on behalf of a customer.
- (8) "Electronic storage" means storage of electronic customer data in a computer, computer network, or computer system, regardless of whether the data is subject to recall, further manipulation, deletion, or transmission. The term includes storage of a wire or electronic communication by an electronic communications service or a remote computing service.
- (9) "ESN reader" means a device that, without intercepting the contents of a communication, records the electronic serial number from the data track of a wireless telephone, cellular telephone, or similar communication device that transmits its operational status to a base site.
- (10) "Pen register" means a device or process that records or decodes dialing, routing,

addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, if the information does not include the contents of the communication. The term does not include a device used by a provider or customer of a wire or electronic communications service in the ordinary course of the service provider's or customer's business for purposes of:

- (A) billing or recording incident to billing for communications services; or
- (B) cost accounting, security control, or other ordinary business purposes.
- (11) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.
- (12) "Remote computing service" means the provision of computer storage or processing services to the public by means of an electronic communications system.
- (13) "Trap and trace device" means a device or process that records an incoming electronic or other impulse that identifies the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, if the information does not include the contents of the communication. The term does not include a device or telecommunications network used in providing:
 - (A) a caller identification service authorized by the Public Utility Commission of Texas under Subchapter E, Chapter 55, Utilities Code;
 - (B) the services referenced by Section 55.102(b), Utilities Code; or
 - (C) a caller identification service provided by a commercial mobile radio service provider licensed by the Federal Communications Commission. (Code Crim. Proc., Art. 18.20, Secs. 1(17), (20); Art. 18.21, Secs. 1(1) (part), (2), (3), (3-a), (3-b), (3-c), (4), (6), (7), (8), (10).)

SUBCHAPTER B. APPLICATION FOR ORDER AUTHORIZING INSTALLATION AND USE OF EQUIPMENT

Art. 18B.051. REQUIREMENTS REGARDING REQUEST FOR AND FILING OF APPLICATION. (a) A prosecutor with jurisdiction in a county within a judicial district described by Article 18B.052 may file with a district judge in the judicial district an application for the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment that combines the function of a pen register and a trap and trace device.

(b) A prosecutor may file an application under this subchapter or under federal law on:

- (1) the prosecutor's own motion; or
- (2) the request of an authorized peace officer, regardless of whether the peace officer is commissioned by the department.

(c) A prosecutor must make an application personally and may not make the application through an assistant or other person acting on the prosecutor's behalf if the prosecutor:

- (1) files an application on the prosecutor's own motion; or
- (2) files an application for the installation and use of a pen register, ESN reader, or similar equipment on the request of an authorized peace officer not commissioned by the department, other than an authorized peace officer employed by a designated law enforcement office or agency.

(d) A prosecutor may make an application through an assistant or other person acting on the prosecutor's behalf if the prosecutor files an application for the installation and use of:

- (1) a pen register, ESN reader, or similar equipment on the request of:
 - (A) an authorized peace officer who is commissioned by the department; or
 - (B) an authorized peace officer of a designated law enforcement office or agency; or

(2) a trap and trace device or similar equipment on the request of an authorized peace officer, regardless of whether the peace officer is commissioned by the department. (Code Crim. Proc., Art. 18.21, Secs. 2(a) (part), (b).)

Art. 18B.052. JURISDICTION. An application under this subchapter must be filed in a judicial district in which is located:

- (1) the site of the proposed installation or use of the device or equipment;
- (2) the site of the communication device on which the device or equipment is proposed to be installed or used;
- (3) the billing, residential, or business address of the subscriber to the electronic communications service on which the device or equipment is proposed to be installed or used;
- (4) the headquarters of:
 - (A) the office of the prosecutor filing an application under this subchapter; or
 - (B) a law enforcement agency that requests the prosecutor to file an application under this subchapter or that proposes to execute an order authorizing installation and use of the device or equipment; or
- (5) the headquarters of a service provider ordered to install the device or equipment. (Code Crim. Proc., Art. 18.21, Sec. 2(a) (part).)

Art. 18B.053. APPLICATION REQUIREMENTS. An application under this subchapter must:

- (1) be made in writing under oath;
- (2) include the name of the subscriber and the telephone number and location of the communication device on which the pen register, ESN reader, trap and trace device, or similar equipment will be used, to the extent that information is known or is reasonably ascertainable; and
- (3) state that the installation and use of the device or equipment will likely produce information that is material to an ongoing criminal investigation. (Code Crim. Proc., Art. 18.21, Sec. 2(c).)

SUBCHAPTER C. ORDER AUTHORIZING INSTALLATION AND USE OF EQUIPMENT

Art. 18B.101. ORDER AUTHORIZING INSTALLATION AND USE OF PEN REGISTER, ESN READER, OR SIMILAR EQUIPMENT. (a) On presentation of an application under Subchapter B, a judge may order the installation and use of a pen register, ESN reader, or similar equipment by an authorized peace officer commissioned by the department or an authorized peace officer of a designated law enforcement office or agency.

(b) On request of the applicant, the judge shall direct in the order that a communication common carrier or a provider of an electronic communications service provide all information, facilities, and technical assistance necessary to facilitate the installation and use of the device or equipment by the department or designated law enforcement office or agency unobtrusively and with a minimum of interference to the services provided by the carrier or service provider. (Code Crim. Proc., Art. 18.21, Sec. 2(d) (part).)

Art. 18B.102. ORDER AUTHORIZING INSTALLATION AND USE OF TRAP AND TRACE DEVICE OR SIMILAR EQUIPMENT. (a) On presentation of an application under Subchapter B, a judge may order the installation and use of a trap and trace device or similar equipment on the appropriate line by a communication common carrier or other person.

(b) The judge may direct the communication common carrier or other person, including any landlord or other custodian of equipment, to provide all information, facilities, and technical assistance necessary to install or use the device or equipment unobtrusively and with a minimum of interference to the services provided by the communication common carrier, landlord, custodian, or other person.

(c) Unless otherwise ordered by the court, the results of the device or equipment shall

be provided to the applicant, as designated by the court, at reasonable intervals during regular business hours, for the duration of the order. (Code Crim. Proc., Art. 18.21, Sec. 2(e) (part).)

Art. 18B.103. COMPENSATION FOR CARRIER OR SERVICE PROVIDER. (a) A communication common carrier or a provider of an electronic communications service that provides facilities and assistance to the department or a designated law enforcement office or agency under Article 18B.101(b) is entitled to compensation at the prevailing rates for the facilities and assistance.

(b) A communication common carrier that provides facilities and assistance to a designated law enforcement office or agency under Article 18B.102(b) is entitled to compensation at the prevailing rates for the facilities and assistance. (Code Crim. Proc., Art. 18.21, Secs. 2(d) (part), (e) (part).)

Art. 18B.104. DURATION OF ORDER. (a) An order for the installation and use of a device or equipment under this subchapter is valid for a period not to exceed 60 days after the earlier of the date the device or equipment is installed or the 10th day after the date the order is entered, unless the prosecutor applies for and obtains an extension of the order from the court before the order expires.

(b) Each extension granted under Subsection (a) may not exceed a period of 60 days, except that the court may extend an order for a period not to exceed one year with the consent of the subscriber or customer of the service on which the device or equipment is used. (Code Crim. Proc., Art. 18.21, Sec. 2(f).)

Art. 18B.105. SEALING RECORDS OF APPLICATION AND ORDER. A district court shall seal an application and order granted under this chapter. (Code Crim. Proc., Art. 18.21, Sec. 2(g).)

SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN EQUIPMENT

Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN REGISTER OR TRAP AND TRACE DEVICE. (a) In this article, "immediate life-threatening situation" has the meaning assigned by Article 18A.201.

(b) A peace officer authorized to possess, install, operate, or monitor a device under Subchapter E, Chapter 18A, may install and use a pen register or trap and trace device if the peace officer reasonably believes:

(1) an immediate life-threatening situation exists that:

(A) is within the territorial jurisdiction of the peace officer or another officer the peace officer is assisting; and

(B) requires the installation of a pen register or trap and trace device before an order authorizing the installation and use can, with due diligence, be obtained under this chapter; and

(2) there are sufficient grounds under this chapter on which to obtain an order authorizing the installation and use of a pen register or trap and trace device. (Code Crim. Proc., Art. 18.21, Secs. 1(1) (part), 3(a).)

Art. 18B.152. ORDER AUTHORIZING EMERGENCY INSTALLATION AND USE. (a) A peace officer who installs or uses a pen register or trap and trace device under Article 18B.151 shall:

(1) promptly report the installation or use of the device to the prosecutor in the county in which the device is installed or used; and

(2) within 48 hours after the installation of the device is complete or the use of the device begins, whichever occurs first, obtain an order under Subchapter C authorizing the installation and use of the device.

(b) A judge may issue an order authorizing the installation and use of a device under this subchapter during the 48-hour period prescribed by Subsection (a)(2). If an order is denied or is not issued within the 48-hour period, the peace officer shall terminate use of and remove the pen register or trap and trace device promptly on the earlier of the denial or the expiration of 48 hours. (Code Crim. Proc., Art. 18.21, Secs. 3(a) (part), (b),

(c.)

Art. 18B.153. **ADMISSIBILITY OF EVIDENCE OBTAINED.** The state may not use as evidence in a criminal proceeding any information gained through the use of a pen register or trap and trace device installed under this subchapter if an authorized peace officer:

- (1) does not apply for authorization for the pen register or trap and trace device; or
- (2) applies for but does not obtain that authorization. (Code Crim. Proc., Art. 18.21, Sec. 3(d).)

SUBCHAPTER E. MOBILE TRACKING DEVICES

Art. 18B.201. **DEFINITION.** In this subchapter, “mobile tracking device” means an electronic or mechanical device that permits tracking the movement of a person, vehicle, container, item, or object. (Code Crim. Proc., Art. 18.21, Sec. 1(5).)

Art. 18B.202. **ORDER AUTHORIZING INSTALLATION AND USE OF MOBILE TRACKING DEVICE.** (a) A district judge may issue an order for the installation and use of a mobile tracking device only on the application of an authorized peace officer.

(b) An application must be written, signed, and sworn to before the judge.

(c) The affidavit must:

- (1) state the name, department, agency, and address of the applicant;
- (2) identify the vehicle, container, or item to which, in which, or on which the mobile tracking device is to be attached, placed, or otherwise installed;
- (3) state the name of the owner or possessor of the vehicle, container, or item identified under Subdivision (2);
- (4) state the judicial jurisdictional area in which the vehicle, container, or item identified under Subdivision (2) is expected to be found; and
- (5) state the facts and circumstances that provide the applicant with a reasonable suspicion that:

(A) criminal activity has been, is, or will be committed; and

(B) the installation and use of a mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity. (Code Crim. Proc., Art. 18.21, Secs. 14(a) (part), (c).)

Art. 18B.203. **JURISDICTION.** (a) A district judge may issue an order for the installation and use of a mobile tracking device in the same judicial district as the site of:

- (1) the investigation; or
- (2) the person, vehicle, container, item, or object the movement of which will be tracked by the device.

(b) The order may authorize the use of a mobile tracking device outside the judicial district but within the state, if the device is installed within the district. (Code Crim. Proc., Art. 18.21, Secs. 14(a), (b).)

Art. 18B.204. **NOTIFICATION OF JUDGE FOLLOWING ACTIVATION OF MOBILE TRACKING DEVICE.** Within 72 hours after the time a mobile tracking device is activated in place on or within a vehicle, container, or item, the applicant for whom an order was issued under this subchapter shall notify in writing the judge who issued the order. (Code Crim. Proc., Art. 18.21, Sec. 14(d).)

Art. 18B.205. **DURATION OF ORDER.** (a) An order under this subchapter expires not later than the 90th day after the date that the mobile tracking device was activated in place on or within the vehicle, container, or item.

(b) For good cause shown, the judge may grant an extension for an additional 90-day period. (Code Crim. Proc., Art. 18.21, Sec. 14(e).)

Art. 18B.206. **REMOVAL OF DEVICE.** (a) The applicant shall remove or cause to be

removed the mobile tracking device as soon as is practicable after the authorization period expires.

(b) If removal is not practicable, the device may not be monitored after the expiration of the order. (Code Crim. Proc., Art. 18.21, Sec. 14(f).)

Art. 18B.207. NONAPPLICABILITY. (a) This subchapter does not apply to a global positioning or similar device installed in or on an item of property by the owner or with the consent of the owner of the property.

(b) In an emergency, a private entity may monitor a device described by Subsection (a). (Code Crim. Proc., Art. 18.21, Sec. 14(g).)

SUBCHAPTER F. LAW ENFORCEMENT POWERS AND DUTIES

Art. 18B.251. POLICY REQUIRED. Each designated law enforcement office or agency shall:

(1) adopt a written policy governing the application of this chapter to the office or agency; and

(2) submit the policy to the director of the department, or the director's designee, for approval. (Code Crim. Proc., Art. 18.21, Sec. 2(j).)

Art. 18B.252. PEACE OFFICERS AUTHORIZED TO POSSESS, INSTALL, OPERATE, OR MONITOR EQUIPMENT. (a) A peace officer of a designated law enforcement office or agency is authorized to possess, install, operate, or monitor a pen register, ESN reader, or similar equipment if the peace officer's name is on the list submitted to the director of the department under Subsection (b).

(b) If the director of the department or the director's designee approves the policy submitted under Article 18B.251, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee, as applicable, shall submit to the director a written list of all peace officers in the designated law enforcement office or agency who are authorized to possess, install, operate, or monitor pen registers, ESN readers, or similar equipment. (Code Crim. Proc., Art. 18.21, Secs. 2(i), (k).)

Art. 18B.253. LIMITATION: PEN REGISTERS. To prevent inclusion of the contents of a wire or electronic communication, a governmental agency authorized to install and use a pen register under this chapter or other law must use reasonably available technology to only record and decode electronic or other impulses used to identify the numbers dialed, routed, addressed, or otherwise processed or transmitted by the communication. (Code Crim. Proc., Art. 18.21, Sec. 16.)

Art. 18B.254. APPLICATION OR ORDER NOT REQUIRED FOR CERTAIN SEARCHES. A peace officer is not required to file an application under Subchapter B or obtain an order under Subchapter C before the peace officer makes an otherwise lawful search, with or without a warrant, to determine the contents of a caller identification message, pager message, or voice message that is contained within the memory of an end-user's identification, paging, or answering device. (Code Crim. Proc., Art. 18.21, Sec. 2(h).)

SUBCHAPTER G. OVERSIGHT

Art. 18B.301. COMPLIANCE AUDIT. (a) The department may conduct an audit of a designated law enforcement office or agency to ensure compliance with this chapter.

(b) If the department determines from the audit that the designated law enforcement office or agency is not in compliance with the policy adopted by the office or agency under Article 18B.251, the department shall notify the office or agency in writing that the office or agency, as applicable, is not in compliance.

(c) If the department determines that the office or agency still is not in compliance with the policy on the 90th day after the date the office or agency receives written notice under Subsection (b), the office or agency loses the authority granted by this chapter until:

(1) the office or agency adopts a new written policy governing the application of this chapter to the office or agency; and

(2) the department approves that policy. (Code Crim. Proc., Art. 18.21, Sec. 2(l).)

Art. 18B.302. REPORT OF EXPENDITURES. (a) The inspector general of the Texas Department of Criminal Justice or the sheriff or chief of a designated law enforcement agency, as applicable, shall submit to the director of the department a written report of expenditures made by the designated law enforcement office or agency to purchase and maintain a pen register, ESN reader, or similar equipment authorized under this chapter.

(b) The director of the department shall report the expenditures publicly on an annual basis on the department's Internet website or by other comparable means. (Code Crim. Proc., Art. 18.21, Sec. 2(m).)

SUBCHAPTER H. ACCESS TO STORED COMMUNICATIONS AND OTHER STORED CUSTOMER DATA

Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER DATA.

(a) An authorized peace officer may require a provider of an electronic communications service or a provider of a remote computing service to disclose electronic customer data that is in electronic storage by obtaining a warrant under Article 18B.354.

(b) An authorized peace officer may require a provider of an electronic communications service or a provider of a remote computing service to disclose only electronic customer data that is information revealing the identity of customers of the applicable service or information about a customer's use of the applicable service, without giving the subscriber or customer notice:

(1) by obtaining an administrative subpoena authorized by statute;

(2) by obtaining a grand jury subpoena;

(3) by obtaining a court order under Article 18B.352;

(4) by obtaining a warrant under Article 18B.354;

(5) by obtaining the consent of the subscriber or customer to the disclosure of the data; or

(6) as otherwise permitted by applicable federal law. (Code Crim. Proc., Art. 18.21, Secs. 4(a), (b).)

Art. 18B.352. COURT ORDER FOR GOVERNMENT ACCESS TO STORED CUSTOMER DATA. (a) A court shall issue an order authorizing disclosure of contents, records, or other information of a wire or electronic communication held in electronic storage if the court determines that there is a reasonable belief that the information sought is relevant to a legitimate law enforcement inquiry.

(b) A court may grant a motion by the service provider to quash or modify the order issued under Subsection (a) if the court determines that:

(1) the information or records requested are unusually voluminous; or

(2) compliance with the order would cause an undue burden on the provider. (Code Crim. Proc., Art. 18.21, Sec. 5.)

Art. 18B.353. WARRANT ISSUED IN THIS STATE: APPLICABILITY. Articles 18B.354–18B.357 apply to a warrant required under Article 18B.351 to obtain electronic customer data, including the contents of a wire or electronic communication. (Code Crim. Proc., Art. 18.21, Sec. 5A(a).)

Art. 18B.354. WARRANT ISSUED IN THIS STATE: APPLICATION AND ISSUANCE OF WARRANT. (a) On the filing of an application by an authorized peace officer, a district judge may issue a search warrant under this article for electronic customer data held in electronic storage, including the contents of and records and other information related to a wire or electronic communication held in electronic storage, by a provider of an electronic communications service or a provider of a remote computing service described by Article 18B.355(b), regardless of whether the customer data is held

at a location in this state or another state. An application made under this subsection must demonstrate probable cause for the issuance of the warrant and must be supported by the oath of the authorized peace officer.

(b) A search warrant may not be issued under this article unless the sworn affidavit required by Article 18.01(b) provides sufficient and substantial facts to establish probable cause that:

- (1) a specific offense has been committed; and
- (2) the electronic customer data sought:

(A) constitutes evidence of that offense or evidence that a particular person committed that offense; and

(B) is held in electronic storage by the service provider on which the warrant is served under Article 18B.355(c).

(c) Only the electronic customer data described in the sworn affidavit required by Article 18.01(b) may be seized under the warrant.

(d) A warrant issued under this article shall run in the name of "The State of Texas."

(e) Article 18.011 applies to an affidavit presented under Article 18.01(b) for the issuance of a warrant under this article, and the affidavit may be sealed in the manner provided by that article. (Code Crim. Proc., Art. 18.21, Secs. 5A(b), (c), (d), (e), (f).)

Art. 18B.355. WARRANT ISSUED IN THIS STATE: EXECUTION OF WARRANT.

(a) Not later than the 11th day after the date of issuance, an authorized peace officer shall execute a warrant issued under Article 18B.354, except that the peace officer shall execute the warrant within a shorter period if the district judge directs a shorter period in the warrant. For purposes of this subsection, a warrant is executed when the warrant is served in the manner described by Subsection (c).

(b) A warrant issued under Article 18B.354 may be served only on a provider of an electronic communications service or a provider of a remote computing service that is a domestic entity or a company or entity otherwise doing business in this state under a contract or a terms of service agreement with a resident of this state, if any part of that contract or agreement is to be performed in this state.

(c) A search warrant issued under Article 18B.354 is served when an authorized peace officer delivers the warrant by hand, by facsimile transmission, or, in a manner allowing proof of delivery, by means of the United States mail or a private delivery service to:

- (1) a person specified by Section 5.255, Business Organizations Code;
- (2) the secretary of state in the case of a company or entity to which Section 5.251, Business Organizations Code, applies; or
- (3) any other person or entity designated to receive the service of process.

(d) The district judge shall hear and decide any motion to quash the warrant not later than the fifth business day after the date the service provider files the motion. The judge may allow the service provider to appear at the hearing by teleconference. (Code Crim. Proc., Art. 18.21, Secs. 5A(b) (part), (g), (h) (part), (i), (m).)

Art. 18B.356. WARRANT ISSUED IN THIS STATE: COMPLIANCE WITH WARRANT. (a) A district judge shall indicate in a warrant issued under Article 18A.354 that the deadline for compliance by the provider of an electronic communications service or the provider of a remote computing service is the 15th business day after the date the warrant is served if the warrant is to be served on a domestic entity or a company or entity otherwise doing business in this state, except that the deadline for compliance with a warrant served in accordance with Section 5.251, Business Organizations Code, may be extended to a date that is not later than the 30th day after the date the warrant is served.

(b) The judge may indicate in the warrant that the deadline for compliance is earlier than the 15th business day after the date the warrant is served if the authorized peace officer who applies for the warrant makes a showing and the judge finds that failure to

comply with the warrant by the earlier deadline would cause serious jeopardy to an investigation, cause undue delay of a trial, or create a material risk of:

- (1) danger to the life or physical safety of any person;
- (2) flight from prosecution;
- (3) the tampering with or destruction of evidence; or
- (4) intimidation of potential witnesses.

(c) The service provider shall produce all electronic customer data, contents of communications, and other information sought, regardless of where the information is held and within the period allowed for compliance with the warrant, as provided by Subsection (a) or (b).

(d) A court may find any designated officer, designated director, or designated owner of a company or entity in contempt of court if the person by act or omission is responsible for the failure of the company or entity to comply with the warrant within the period allowed for compliance.

(e) The failure of a company or entity to timely deliver the information sought in the warrant does not affect the admissibility of that evidence in a criminal proceeding.

(f) On a service provider's compliance with a warrant issued under Article 18B.354, an authorized peace officer shall file a return of the warrant and a copy of the inventory of the seized property as required under Article 18.10.

(g) A provider of an electronic communications service or a provider of a remote computing service responding to a warrant issued under Article 18B.354 may request an extension of the period for compliance with the warrant if extenuating circumstances exist to justify the extension. The district judge shall grant a request for an extension based on those circumstances if:

- (1) the authorized peace officer who applied for the warrant or another appropriate authorized peace officer agrees to the extension; or
- (2) the district judge finds that the need for the extension outweighs the likelihood that the extension will cause an adverse circumstance described by Subsection (b). (Code Crim. Proc., Art. 18.21, Secs. 5A(b) (part), (h) (part), (j), (l), (n).)

Art. 18B.357. **WARRANT ISSUED IN THIS STATE: AUTHENTICATION OF RECORDS BY SERVICE PROVIDER.** If an authorized peace officer serving a warrant under Article 18B.355 also delivers an affidavit form to the provider of an electronic communications service or the provider of a remote computing service responding to the warrant, and the peace officer also notifies the service provider in writing that an executed affidavit is required, the service provider shall verify the authenticity of the customer data, contents of communications, and other information produced in compliance with the warrant by including with the information an affidavit form that:

- (1) is completed and sworn to by a person who is a custodian of the information or a person otherwise qualified to attest to the authenticity of the information; and
- (2) states that the information was stored in the course of regularly conducted business of the service provider and specifies whether the regular practice of the service provider is to store that information. (Code Crim. Proc., Art. 18.21, Sec. 5A(k).)

Art. 18B.358. **WARRANT ISSUED IN ANOTHER STATE.** Any domestic entity that provides electronic communications services or remote computing services to the public shall comply with a warrant issued in another state and seeking information described by Article 18B.354(a), if the warrant is served on the entity in a manner equivalent to the service of process requirements provided by Article 18B.355(b). (Code Crim. Proc., Art. 18.21, Sec. 5B.)

Art. 18B.359. **GOVERNMENT ACCESS TO CERTAIN STORED CUSTOMER DATA WITHOUT LEGAL PROCESS.** (a) A provider of a telephonic communications service shall disclose to an authorized peace officer, without legal process, subscriber listing information, including name, address, and telephone number or similar access code:

- (1) that the service provider provides to others in the course of providing publicly available directory or similar assistance; or

(2) that is solely for use in the dispatch of emergency vehicles and personnel responding to a distress call directed to an emergency dispatch system or when the information is reasonably necessary to aid in the dispatching of emergency vehicles and personnel for the immediate prevention of death, personal injury, or destruction of property.

(b) A provider of a telephonic communications service shall provide to an authorized peace officer the name of the subscriber of record whose published telephone number is provided to the service provider by an authorized peace officer. (Code Crim. Proc., Art. 18.21, Secs. 4(c), (d).)

SUBCHAPTER I. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA

Art. 18B.401. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA.

(a) A subpoena or court order under Article 18B.351(b) for disclosure of certain electronic customer data held in electronic storage by a provider of an electronic communications service or a provider of a remote computing service may, for the purpose of preserving the customer data sought by the subpoena or court order, require that service provider to create a copy of that data.

(b) The service provider shall create the copy within a reasonable period as determined by the court issuing the subpoena or court order.

(c) On creating a copy under this article, the service provider shall immediately notify the authorized peace officer who presented the subpoena or court order requesting the copy.

(d) The service provider may not inform the subscriber or customer whose data is being sought that the subpoena or court order has been issued. (Code Crim. Proc., Art. 18.21, Secs. 6(a), (b).)

Art. 18B.402. NOTICE TO SUBSCRIBER OR CUSTOMER. Not later than the third day after the date of the receipt of the notice under Article 18B.401(c) from the applicable service provider, the authorized peace officer who presented the subpoena or court order requesting the copy shall provide notice of the creation of the copy to the subscriber or customer whose electronic customer data is the subject of the subpoena or court order. (Code Crim. Proc., Art. 18.21, Secs. 6(b) (part), (c).)

Art. 18B.403. RELEASE OF COPY OF ELECTRONIC CUSTOMER DATA. The provider of an electronic communications service or the provider of a remote computing service shall release a copy created under this subchapter to the requesting authorized peace officer not earlier than the 14th day after the date of the peace officer's notice to the subscriber or customer if the service provider has not:

- (1) initiated proceedings to challenge the request of the peace officer for the copy; or
- (2) received notice from the subscriber or customer that the subscriber or customer has initiated proceedings to challenge the request. (Code Crim. Proc., Art. 18.21, Sec. 6(d).)

Art. 18B.404. DESTRUCTION OF COPY OF ELECTRONIC CUSTOMER DATA. The provider of an electronic communications service or the provider of a remote computing service may not destroy or permit the destruction of a copy created under this subchapter until the later of:

- (1) the delivery of electronic customer data to the applicable law enforcement agency; or
- (2) the resolution of any court proceedings, including appeals of any proceedings, relating to the subpoena or court order requesting the creation of the copy. (Code Crim. Proc., Art. 18.21, Sec. 6(e).)

Art. 18B.405. REQUEST FOR COPY OF ELECTRONIC CUSTOMER DATA BY AUTHORIZED PEACE OFFICER. (a) An authorized peace officer who reasonably believes that notice to a subscriber or customer regarding a subpoena or court order would result in the destruction of or tampering with the electronic customer data sought may request the creation of a copy of the data.

(b) The peace officer's belief is not subject to challenge by the subscriber or customer or by a provider of an electronic communications service or a provider of a remote

computing service. (Code Crim. Proc., Art. 18.21, Sec. 6(f).)

Art. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE COURT ORDER. (a) Not later than the 14th day after the date a subscriber or customer receives notice under Article 18B.402, the subscriber or customer may file a written motion to quash the subpoena or vacate the court order in the court that issued the subpoena or court order. The motion must contain an affidavit or other sworn statement stating:

(1) that the applicant is a subscriber or customer of the provider of an electronic communications service or the provider of a remote computing service from which the electronic customer data held in electronic storage for the subscriber or customer has been sought; and

(2) the applicant's reasons for believing that the customer data sought is not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

(b) The subscriber or customer shall give written notice to the applicable service provider of the challenge to the subpoena or court order. The authorized peace officer requesting the subpoena or court order must be served a copy of the filed papers by personal delivery or by registered or certified mail.

(c) The court shall order the authorized peace officer to file a sworn response to the motion filed by the subscriber or customer if the court determines that the subscriber or customer has complied with the requirements of Subsections (a) and (b). On request of the peace officer, the court may permit the response to be filed in camera. The court may conduct any additional proceedings the court considers appropriate if the court is unable to make a determination on the motion on the basis of the parties' initial allegations and response.

(d) The court shall rule on the motion as soon as practicable after the filing of the peace officer's response. The court shall deny the motion if the court finds that the applicant is not the subscriber or customer whose data is the subject of the subpoena or court order or that there is reason to believe that the peace officer's inquiry is legitimate and that the data sought is relevant to that inquiry. The court shall quash the subpoena or vacate the court order if the court finds that the applicant is the subscriber or customer whose data is the subject of the subpoena or court order and that there is not a reason to believe that the data is relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter.

(e) A court order denying a motion or application under this article is not a final order, and an interlocutory appeal may not be taken from the denial. (Code Crim. Proc., Art. 18.21, Secs. 6(g), (h).)

SUBCHAPTER J. PRODUCTION OF CERTAIN BUSINESS RECORDS

Art. 18B.451. SUBPOENA AUTHORITY. The director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee may issue an administrative subpoena to a communication common carrier or a provider of an electronic communications service to compel the production of any carrier's or service provider's business records that:

(1) disclose information about:

(A) the carrier's or service provider's customers; or

(B) users of the services offered by the carrier or service provider; and

(2) are material to a criminal investigation. (Code Crim. Proc., Art. 18.21, Sec. 15(a).)

Art. 18B.452. REPORT OF ISSUANCE OF SUBPOENA. Not later than the 30th day after the date on which an administrative subpoena is issued under Article 18B.451, the inspector general of the Texas Department of Criminal Justice or the sheriff or chief of a designated law enforcement agency, as applicable, shall report to the department the issuance of the subpoena. (Code Crim. Proc., Art. 18.21, Sec. 15(b).)

Art. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION AND USE OF

EQUIPMENT. (a) If, based on a report received under Article 18B.452, the department determines that a designated law enforcement office or agency is not in compliance with the policy adopted by the office or agency under Article 18B.251, the department shall notify the office or agency in writing that the office or agency, as applicable, is not in compliance.

(b) If the department determines that the office or agency still is not in compliance with the policy on the 90th day after the date the office or agency receives written notice under this article, the office or agency loses the authority granted by this chapter until:

(1) the office or agency adopts a new written policy governing the application of this chapter to the office or agency; and

(2) the department approves that policy. (Code Crim. Proc., Art. 18.21, Sec. 15(c).)

SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

Art. 18B.501. PRECLUSION OF NOTIFICATION. (a) An authorized peace officer seeking electronic customer data under Article 18B.351 may apply to the court for an order commanding the service provider to whom a warrant, subpoena, or court order is directed not to disclose to any person the existence of the warrant, subpoena, or court order. The order is effective for the period the court considers appropriate.

(b) The court shall enter the order if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will have an adverse result.

(c) In this article, an “adverse result” means:

(1) endangering the life or physical safety of an individual;

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of a potential witness; or

(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial. (Code Crim. Proc., Art. 18.21, Sec. 8.)

Art. 18B.502. DISCLOSURE BY SERVICE PROVIDER PROHIBITED. (a) Except as provided by Subsection (c), a provider of an electronic communications service may not knowingly divulge the contents of a communication that is in electronic storage.

(b) Except as provided by Subsection (c), a provider of a remote computing service may not knowingly divulge the contents of a communication that:

(1) is in electronic storage on behalf of a subscriber or customer of the service provider;

(2) is received by means of electronic transmission from the subscriber or customer or created by means of computer processing of communications received by means of electronic transmission from the subscriber or customer; and

(3) is solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the service provider is not authorized to obtain access to the contents of that communication for purposes of providing any service other than storage or computer processing.

(c) A provider of an electronic communications service or a provider of a remote computing service may disclose the contents of an electronically stored communication:

(1) to an intended recipient of the communication or the intended recipient’s agent;

(2) to the addressee or the addressee’s agent;

(3) with the consent of the originator, to the addressee or the intended recipient of the communication, or the subscriber of a remote computing service;

(4) to a person whose facilities are used to transmit the communication to its destination or the person’s employee or authorized representative;

(5) as may be necessary to provide the service or to protect the property or rights of the service provider;

(6) to a law enforcement agency if the contents were obtained inadvertently by the service provider and the contents appear to pertain to the commission of an offense; or

(7) as authorized under federal or other state law. (Code Crim. Proc., Art. 18.21, Sec. 11.)

Art. 18B.503. REIMBURSEMENT OF COSTS. (a) Except as provided by Subsection (c), an authorized peace officer who obtains electronic customer data under Article 18B.351 or 18B.359 or other information under this chapter shall reimburse the person assembling or providing the data or information for all costs that are reasonably necessary and that have been directly incurred in searching for, assembling, reproducing, or otherwise providing the data or information, including costs arising from necessary disruption of normal operations of a provider of an electronic communications service or a provider of a remote computing service in which the electronic customer data may be held in electronic storage or in which the other information may be stored.

(b) The authorized peace officer and the person providing the electronic customer data or other information may agree on the amount of reimbursement. If there is not an agreement, the court that issued the order for production of the data or information shall determine the amount. If a court order was not issued for production of the data or information, the court before which any criminal prosecution relating to the data or information would be brought shall determine the amount.

(c) Subsection (a) does not apply to records or other information that is maintained by a communication common carrier and that relates to telephone toll records or telephone listings obtained under Article 18B.359(a), unless the court determines that:

(1) the amount of information required was unusually voluminous; or

(2) an undue burden was imposed on the service provider. (Code Crim. Proc., Art. 18.21, Sec. 9.)

SUBCHAPTER L. REMEDIES

Art. 18B.551. CAUSE OF ACTION. (a) Except as provided by Article 18B.552, a provider of an electronic communications service or a provider of a remote computing service, or a subscriber or customer of that service provider, that is aggrieved by a violation of this chapter has a civil cause of action if the conduct constituting the violation was committed knowingly or intentionally and is entitled to:

(1) injunctive relief;

(2) reasonable attorney's fees and other litigation costs reasonably incurred; and

(3) the amount of the actual damages suffered and any profits made by the violator as a result of the violation or \$1,000, whichever is more.

(b) The reliance in good faith on a court order, warrant, subpoena, or legislative authorization is a complete defense to any civil action brought under this chapter.

(c) A civil action under this article may be presented not later than the second anniversary of the date the claimant first discovered or had reasonable opportunity to discover the violation. (Code Crim. Proc., Art. 18.21, Sec. 12.)

Art. 18B.552. NO CAUSE OF ACTION. A subscriber or customer of a provider of an electronic communications service or a provider of a remote computing service does not have a cause of action against a service provider or the service provider's officers, employees, or agents or against other specified persons for providing information, facilities, or assistance as required by a court order, warrant, subpoena, or certification under this chapter. (Code Crim. Proc., Art. 18.21, Sec. 10.)

Art. 18B.553. EXCLUSIVITY OF REMEDIES. The remedies and sanctions under this chapter are the exclusive judicial remedies and sanctions for a violation of this chapter, other than a violation that infringes on a right of a party that is guaranteed by a state or federal constitution. (Code Crim. Proc., Art. 18.21, Sec. 13.)

SECTION 1.03. Title 1, Code of Criminal Procedure, is amended by adding Chapter 66 to read as follows:

CHAPTER 66. CRIMINAL HISTORY RECORD SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Art. 66.001. DEFINITIONS

SUBCHAPTER B. CRIMINAL JUSTICE INFORMATION SYSTEM

Art. 66.051. PURPOSE AND FUNCTIONS

Art. 66.052. IMPLEMENTATION AND OPERATION OF CRIMINAL JUSTICE INFORMATION SYSTEM

Art. 66.053. INFORMATION COLLECTED

Art. 66.054. FINGERPRINT AND ARREST INFORMATION IN CRIMINAL JUSTICE INFORMATION SYSTEM

SUBCHAPTER C. COMPUTERIZED CRIMINAL HISTORY SYSTEM

Art. 66.101. COMPUTERIZED CRIMINAL HISTORY SYSTEM DATABASE

Art. 66.102. INFORMATION CONTAINED IN COMPUTERIZED CRIMINAL HISTORY SYSTEM

Art. 66.103. DUTIES OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE REGARDING CRIMINAL JUSTICE INFORMATION SYSTEM

Art. 66.104. DUTIES OF LICENSING AGENCIES TO PROVIDE INFORMATION REGARDING LICENSE HOLDERS

Art. 66.105. INFORMATION RELATED TO MISUSED IDENTITY

Art. 66.106. INFORMATION RELATED TO NON-FINGERPRINT SUPPORTED ACTIONS

SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

Art. 66.151. CORRECTIONS TRACKING SYSTEM DATABASE

Art. 66.152. INFORMATION CONTAINED IN CORRECTIONS TRACKING SYSTEM

SUBCHAPTER E. ACCESS TO INFORMATION IN CRIMINAL JUSTICE INFORMATION SYSTEM

Art. 66.201. ACCESS TO DATABASES BY CRIMINAL JUSTICE AGENCIES AND OTHER ENTITIES

Art. 66.202. REQUEST FOR DATA FILE FROM DATABASES

Art. 66.203. PUBLIC DISCLOSURE OF DATA PROHIBITED

SUBCHAPTER F. DATA COLLECTION AND SUBMISSION

Art. 66.251. UNIFORM INCIDENT FINGERPRINT CARD

Art. 66.252. REPORTING OF INFORMATION BY LOCAL ENTITIES

Art. 66.253. COMPATIBILITY OF DATA

Art. 66.254. ELECTRONIC REPORTING OF INFORMATION

Art. 66.255. INFORMATION ON SUBSEQUENT ARRESTS

SUBCHAPTER G. DUTIES OF CRIMINAL JUSTICE AGENCIES AND CERTAIN COURT CLERKS

Art. 66.301. DUTIES OF CRIMINAL JUSTICE AGENCIES

Art. 66.302. PUBLIC DISCLOSURE NOT AUTHORIZED

Art. 66.303. PROHIBITED ACTS

Art. 66.304. APPLICABILITY TO DISTRICT COURT AND COUNTY COURT CLERKS

SUBCHAPTER H. OVERSIGHT AND REPORTING

Art. 66.351. BIENNIAL PLANS

Art. 66.352. EXAMINATION OF RECORDS AND OPERATIONS

Art. 66.353. MONITORING AND REPORTING DUTIES OF DEPARTMENT OF PUBLIC SAFETY

Art. 66.354. LOCAL DATA ADVISORY BOARDS

SUBCHAPTER I. GRANTS

Art. 66.401. GRANTS FOR CRIMINAL JUSTICE PROGRAMS

Art. 66.402. CERTIFICATION REQUIRED

CHAPTER 66. CRIMINAL HISTORY RECORD SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Art. 66.001. DEFINITIONS. In this chapter:

(1) "Administration of criminal justice" means the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(2) "Computerized criminal history system" means the database containing arrest, disposition, and other criminal history maintained by the Department of Public Safety.

(3) "Corrections tracking system" means the database maintained by the Texas Department of Criminal Justice on all offenders under the department's supervision.

(4) "Council" means the Criminal Justice Policy Council.

(5) "Criminal justice agency" means a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of the agency's annual budget to the administration of criminal justice.

(6) "Criminal justice information system" means the computerized criminal history system and the corrections tracking system.

(7) "Disposition" means an action that results in the termination, transfer to another jurisdiction, or indeterminate suspension of the prosecution of a criminal charge.

(8) "Electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission.

(9) "Incident number" means the unique number assigned to a specific person during a specific arrest.

(10) "Offender" means any person who is assigned an incident number.

(11) "Offense code" means the numeric code for each offense category.

(12) "Release" means the termination of jurisdiction over an individual by the criminal justice system.

(13) "State identification number" means the unique number assigned by the Department of Public Safety to each person whose name appears in the criminal justice information system. (Code Crim. Proc., Arts. 60.01(1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), (16).)

SUBCHAPTER B. CRIMINAL JUSTICE INFORMATION SYSTEM

Art. 66.051. PURPOSE AND FUNCTIONS. The criminal justice information system shall be maintained to supply the state with a system:

(1) that provides an accurate criminal history record depository to:

(A) law enforcement officers; and

(B) criminal justice agencies for operational decision making;

(2) from which accurate criminal justice system modeling can be conducted; and

(3) that improves:

(A) the quality of data used to conduct impact analyses of proposed legislative changes in the criminal justice system; and

(B) the ability of interested parties to analyze the functioning of the criminal justice system. (Code Crim. Proc., Art. 60.02(c).)

Art. 66.052. IMPLEMENTATION AND OPERATION OF CRIMINAL JUSTICE INFORMATION SYSTEM. (a) The Department of Public Safety shall designate offense codes and has the sole responsibility for designating the state identification number for each person whose name appears in the criminal justice information system.

(b) The Department of Public Safety and the Texas Department of Criminal Justice shall implement a system to link the computerized criminal history system and the corrections tracking system. (Code Crim. Proc., Arts. 60.02(e), (f) (part).)

Art. 66.053. INFORMATION COLLECTED. For each arrest for a felony or misdemeanor other than a misdemeanor punishable by fine only, the criminal justice information system must include information relating to:

- (1) offenders;
- (2) arrests;
- (3) prosecutions;
- (4) the disposition of cases by courts;
- (5) sentencing; and

(6) the handling of offenders received by a correctional agency, facility, or other institution. (Code Crim. Proc., Art. 60.05.)

Art. 66.054. FINGERPRINT AND ARREST INFORMATION IN CRIMINAL JUSTICE INFORMATION SYSTEM. (a) When a jurisdiction transmits fingerprints and arrest information by a remote terminal accessing the statewide automated fingerprint identification system, the Department of Public Safety shall use that transmission to create:

- (1) a permanent record in the criminal justice information system; or

(2) a temporary arrest record in the criminal justice information system to be maintained by the department until the department receives and processes the physical copy of the arrest information.

(b) The Department of Public Safety shall make available to a criminal justice agency making a background criminal inquiry any information contained in a temporary arrest record maintained by the department, including a statement that a physical copy of the arrest information was not available at the time the information was entered in the criminal justice information system. (Code Crim. Proc., Art. 60.12.)

SUBCHAPTER C. COMPUTERIZED CRIMINAL HISTORY SYSTEM

Art. 66.101. COMPUTERIZED CRIMINAL HISTORY SYSTEM DATABASE. (a) The Department of Public Safety shall record data and maintain the computerized criminal history system that serves as the record creation point for criminal history information maintained by the state.

(b) The computerized criminal history system must contain the information required by this chapter.

(c) The Department of Public Safety shall operate the computerized criminal history system and develop the necessary interfaces in the system to accommodate inquiries from the statewide automated fingerprint identification system implemented by the department. (Code Crim. Proc., Arts. 60.02(b), (d), (g).)

Art. 66.102. INFORMATION CONTAINED IN COMPUTERIZED CRIMINAL HISTORY SYSTEM. (a) In this article:

(1) "Appeal" means the review of a decision of a lower court by a superior court other than by collateral attack.

(2) "Rejected case" means:

(A) a charge that, after the arrest of the offender, the prosecutor declines to include in an information or present to a grand jury; or

(B) an information or indictment that, after the arrest of the offender, the prosecutor refuses to prosecute.

(b) Information in the computerized criminal history system relating to an offender must include the offender's:

(1) name, including other names by which the offender is known;

(2) date of birth;

(3) physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos; and

(4) state identification number.

(c) Information in the computerized criminal history system relating to an arrest must include:

(1) the offender's name;

(2) the offender's state identification number;

(3) the arresting law enforcement agency;

(4) the arrest charge, by offense code and incident number;

(5) whether the arrest charge is a misdemeanor or felony;

(6) the date of the arrest;

(7) the exact disposition of the case by a law enforcement agency following the arrest; and

(8) the date of disposition of the case by the law enforcement agency.

(d) Information in the computerized criminal history system relating to a prosecution must include:

(1) each charged offense, by offense code and incident number;

(2) the level of the offense charged or the degree of the offense charged for each offense in Subdivision (1); and

(3) for a rejected case:

(A) the date of rejection;

(B) the offense code;

(C) the incident number; and

(D) whether the rejection is a result of a successful pretrial diversion program.

(e) Information in the computerized criminal history system relating to the disposition of a case other than a rejected case must include:

(1) the final pleading to each charged offense and the level of the offense;

(2) a listing of each charged offense disposed of by the court and:

(A) the date of disposition;

(B) the offense code for the disposed charge and incident number; and

(C) the type of disposition; and

(3) for a conviction that is appealed, the final court decision and the final disposition of the offender's case on appeal.

(f) Information in the computerized criminal history system relating to sentencing must include for each sentence:

(1) the sentencing date;

(2) the sentence for each offense, by offense code and incident number;

(3) if the offender was sentenced to confinement:

- (A) the agency that receives custody of the offender;
- (B) the length of the sentence for each offense; and
- (C) if multiple sentences were ordered, whether the sentences were ordered to be served consecutively or concurrently;
- (4) if the offender was sentenced to pay a fine, the amount of the fine;
- (5) if a sentence to pay a fine or to confinement was ordered but was deferred, probated, suspended, or otherwise not imposed:
 - (A) the length of the sentence or the amount of the fine that was deferred, probated, suspended, or otherwise not imposed; and
 - (B) the offender's name, offense code, and incident number; and
- (6) if a sentence other than a fine or confinement was ordered, a description of the sentence ordered.
- (g) The Department of Public Safety shall maintain in the computerized criminal history system any information the department maintains in the central database under Article 62.005.

(h) In addition to the information described by this article, information in the computerized criminal history system must include the age of the victim of the offense if the offender was arrested for or charged with an offense under the following provisions of the Penal Code:

- (1) Section 20.04(a)(4) (Aggravated Kidnapping), if the offender committed the offense with the intent to violate or abuse the victim sexually;
- (2) Section 20A.02 (Trafficking of Persons), if the offender:
 - (A) trafficked a person with the intent or knowledge that the person would engage in sexual conduct, as defined by Section 43.25, Penal Code; or
 - (B) benefited from participating in a venture that involved a trafficked person engaging in sexual conduct, as defined by Section 43.25, Penal Code;
- (3) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
- (4) Section 21.11 (Indecency with a Child);
- (5) Section 22.011 (Sexual Assault) or 22.021 (Aggravated Sexual Assault);
- (6) Section 30.02 (Burglary), if the offense is punishable under Subsection (d) of that section and the offender committed the offense with the intent to commit an offense described by Subdivision (1), (4), or (5);
- (7) Section 43.05(a)(2) (Compelling Prostitution); or
- (8) Section 43.25 (Sexual Performance by a Child). (Code Crim. Proc., Arts. 60.01(2), (12), 60.051.)

Art. 66.103. DUTIES OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE REGARDING CRIMINAL JUSTICE INFORMATION SYSTEM. Data received by the Texas Department of Criminal Justice that is required by the Department of Public Safety for the preparation of a criminal history record shall be made available to the computerized criminal history system not later than the seventh day after the date on which the Texas Department of Criminal Justice receives the request for the data from the Department of Public Safety. (Code Crim. Proc., Art. 60.02(f) (part).)

Art. 66.104. DUTIES OF LICENSING AGENCIES TO PROVIDE INFORMATION REGARDING LICENSE HOLDERS. (a) The Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the Texas State Board of Pharmacy, the Texas State Board of Examiners of Psychologists, and the State Board of Veterinary Medical Examiners shall provide to the Department of Public Safety through electronic means, magnetic tape, or disk, as specified by the department, a list of each person licensed by the respective agency, including the person's name and date of birth and any other personal descriptive information required by the department. Each agency shall update the information and submit the updated information quarterly to the department.

(b) The Department of Public Safety shall:

(1) perform at least quarterly a computer match of the licensing list against the convictions maintained in the computerized criminal history system; and

(2) report to the appropriate licensing agency for verification and administrative action, as considered appropriate by the licensing agency, the name of any person found to have a record of conviction, other than a defendant whose prosecution is deferred during a period of community supervision without an adjudication of guilt or a plea of guilty.

(c) The Department of Public Safety may charge a licensing agency a fee not to exceed the actual direct cost incurred by the department in performing a computer match and reporting to the agency under Subsection (b).

(d) The transmission of information by electronic means under Subsection (a) does not affect whether the information is subject to disclosure under Chapter 552, Government Code. (Code Crim. Proc., Art. 60.061.)

Art. 66.105. INFORMATION RELATED TO MISUSED IDENTITY. (a) On receipt of information from a local law enforcement agency under Article 2.28, the Department of Public Safety shall:

(1) provide the notice described by Article 2.28(1) to the person whose identity was misused, if the local law enforcement agency was unable to notify the person under that subdivision;

(2) take action to ensure that the information maintained in the computerized criminal history system reflects the use of the person's identity as a stolen alias; and

(3) notify the Texas Department of Criminal Justice that the person's identifying information may have been falsely used by an inmate in the custody of the Texas Department of Criminal Justice.

(b) On receipt of a declaration under Section 411.0421, Government Code, or on receipt of information similar to that contained in a declaration filed under that section, the Department of Public Safety shall separate information maintained in the computerized criminal history system regarding an individual whose identity has been misused from information maintained in that system regarding the person who misused the identity. (Code Crim. Proc., Art. 60.19.)

Art. 66.106. INFORMATION RELATED TO NON-FINGERPRINT SUPPORTED ACTIONS. (a) On receipt of a report of prosecution or court disposition information from a jurisdiction for which corresponding arrest data does not exist in the computerized criminal history system, the Department of Public Safety shall enter the report into a non-fingerprint supported file that is separate from the computerized criminal history system.

(b) The Department of Public Safety shall grant access to records in a non-fingerprint supported file created under Subsection (a) that include the subject's name or other identifier in the same manner as the department is required to grant access to criminal history record information under Subchapter F, Chapter 411, Government Code.

(c) On receipt of a report of arrest information that corresponds to a record in a non-fingerprint supported file created under Subsection (a), the Department of Public Safety shall transfer the record from the non-fingerprint supported file to the computerized criminal history system. (Code Crim. Proc., Art. 60.20.)

SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

Art. 66.151. CORRECTIONS TRACKING SYSTEM DATABASE. (a) The Texas Department of Criminal Justice shall record data and establish and maintain the corrections tracking system.

(b) The corrections tracking system must contain the information required by this chapter. (Code Crim. Proc., Arts. 60.02(a), (d).)

Art. 66.152. INFORMATION CONTAINED IN CORRECTIONS TRACKING SYSTEM. (a) Information in the corrections tracking system relating to a sentence to be served under the jurisdiction of the Texas Department of Criminal Justice must include:

- (1) the offender's name;
 - (2) the offender's state identification number;
 - (3) the sentencing date;
 - (4) the sentence for each offense, by offense code and incident number;
 - (5) if the offender was sentenced to imprisonment:
 - (A) the unit of imprisonment;
 - (B) the length of the sentence for each offense; and
 - (C) if multiple sentences were ordered, whether the sentences were ordered to be served consecutively or concurrently; and
 - (6) if a sentence other than a fine or imprisonment was ordered, a description of the sentence ordered.
- (b) Sentencing information in the corrections tracking system must also include the following information about each community supervision, including deferred adjudication community supervision, or other alternative to imprisonment ordered:
- (1) each conviction for which a sentence was ordered but was deferred, probated, suspended, or otherwise not imposed, by offense code and incident number; and
 - (2) if a sentence or portion of a sentence of imprisonment was deferred, probated, suspended, or otherwise not imposed:
 - (A) the offense, the sentence, and the amount of the sentence deferred, probated, suspended, or otherwise not imposed;
 - (B) a statement of whether any return to imprisonment or confinement was a condition of community supervision or an alternative sentence;
 - (C) the community supervision and corrections department exercising jurisdiction over the offender;
 - (D) the date the offender was received by a community supervision and corrections department;
 - (E) any program in which the offender is placed or has previously been placed and the level of supervision on which the offender is placed while under the jurisdiction of a community supervision and corrections department;
 - (F) the date a program described by Paragraph (E) begins, the date the program ends, and whether the program was completed successfully;
 - (G) the date a level of supervision described by Paragraph (E) begins and the date the level of supervision ends;
 - (H) if the offender's community supervision is revoked:
 - (i) the reason for the revocation and the date of revocation, by offense code and incident number; and
 - (ii) other current sentences of community supervision or other alternatives to confinement that have not been revoked, by offense code and incident number; and
 - (I) the date of the offender's release from the community supervision and corrections department.
- (c) Information in the corrections tracking system relating to the handling of offenders must include the following information about each imprisonment, confinement, or execution of an offender:
- (1) the date of the imprisonment or confinement;
 - (2) if the offender was sentenced to death:
 - (A) the date of execution; and
 - (B) if the death sentence was commuted, the sentence to which the sentence of death was commuted and the date of commutation;

(3) the date the offender was released from imprisonment or confinement and whether the release was a discharge or a release on parole or to mandatory supervision;

(4) if the offender is released on parole or to mandatory supervision:

(A) the offense for which the offender was convicted, by offense code and incident number;

(B) the date the offender was received by an office of the parole division of the Texas Department of Criminal Justice;

(C) the county in which the offender resides while under supervision;

(D) any program in which the offender is placed or has previously been placed and the level of supervision on which the offender is placed while under the jurisdiction of the parole division;

(E) the date a program described by Paragraph (D) begins, the date the program ends, and whether the program was completed successfully;

(F) the date a level of supervision described by Paragraph (D) begins and the date the level of supervision ends;

(G) if the offender's release status is revoked, the reason for the revocation and the date of revocation;

(H) the expiration date of the sentence; and

(I) the date on which the offender is:

(i) released from the parole division; or

(ii) granted clemency; and

(5) if the offender is released under Article 42A.202(b), the date of the offender's release. (Code Crim. Proc., Art. 60.052.)

SUBCHAPTER E. ACCESS TO INFORMATION IN CRIMINAL JUSTICE INFORMATION SYSTEM

Art. 66.201. ACCESS TO DATABASES BY CRIMINAL JUSTICE AGENCIES AND OTHER ENTITIES. (a) Criminal justice agencies, the Legislative Budget Board, and the council are entitled to access the databases of the Department of Public Safety, the Texas Juvenile Justice Department, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations.

(b) The access granted by this article does not entitle a criminal justice agency, the Legislative Budget Board, or the council to add, delete, or alter data maintained by another agency. (Code Crim. Proc., Art. 60.03(a).)

Art. 66.202. REQUEST FOR DATA FILE FROM DATABASES. (a) The council or the Legislative Budget Board may submit to the Department of Public Safety, the Texas Juvenile Justice Department, and the Texas Department of Criminal Justice an annual request for a data file containing data elements from the departments' systems.

(b) The Department of Public Safety, the Texas Juvenile Justice Department, and the Texas Department of Criminal Justice shall provide the council and the Legislative Budget Board with the data file for the period requested, in accordance with state and federal law and regulations.

(c) If the council submits a data file request other than the annual data file request, the director of the agency maintaining the requested records must approve the request.

(d) The Legislative Budget Board may submit a data file request other than the annual data file request without the approval of the director of the agency maintaining the requested records. (Code Crim. Proc., Art. 60.03(b).)

Art. 66.203. PUBLIC DISCLOSURE OF DATA PROHIBITED. A criminal justice agency, the council, and the Legislative Budget Board may not disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation. (Code Crim. Proc., Art. 60.03(c).)

SUBCHAPTER F. DATA COLLECTION AND SUBMISSION

Art. 66.251. UNIFORM INCIDENT FINGERPRINT CARD. (a) The Department of Public Safety, in consultation with the council, shall design, print, and distribute a uniform incident fingerprint card to each law enforcement agency in this state.

(b) The uniform incident fingerprint card must be:

(1) serially numbered with an incident number in such a manner that the individual incident of arrest may be readily ascertained; and

(2) a multiple-part form that:

(A) has space for information relating to each charge for which a person is arrested, the person's fingerprints, and other information relevant to the arrest;

(B) can be transmitted with the offender through the criminal justice process; and

(C) allows each law enforcement agency to report required data to the Department of Public Safety or the Texas Department of Criminal Justice.

(c) Subject to available telecommunications capacity, the Department of Public Safety shall develop the capability to receive the information on the uniform incident fingerprint card by electronic means from a law enforcement agency. The information must be in a form that is compatible with the form required for data supplied to the criminal justice information system. (Code Crim. Proc., Arts. 60.01(15), 60.07.)

Art. 66.252. REPORTING OF INFORMATION BY LOCAL ENTITIES. (a) The Department of Public Safety and the Texas Department of Criminal Justice by rule shall develop reporting procedures that:

(1) ensure that the offender processing data is reported from the time an offender is arrested until the time an offender is released; and

(2) provide measures and policies designed to identify and eliminate redundant reporting of information to the criminal justice information system.

(b) The arresting law enforcement agency shall prepare a uniform incident fingerprint card described by Article 66.251 and initiate the reporting process for each offender charged with a felony or a misdemeanor other than a misdemeanor punishable by fine only.

(c) The clerk of the court exercising jurisdiction over a case shall report the disposition of the case to the Department of Public Safety.

(d) Except as provided by Subsection (e) or as otherwise required by applicable state law or rule, information or data required by this chapter to be reported to the Department of Public Safety or the Texas Department of Criminal Justice shall be reported promptly but not later than the 30th day after the date on which the information or data is received by the agency responsible for reporting it.

(e) An offender's arrest shall be reported to the Department of Public Safety not later than the seventh day after the date of the arrest.

(f) A court that orders the release of an offender under Article 42A.202(b) when the offender is under a bench warrant and not physically imprisoned in the Texas Department of Criminal Justice shall report the release to the department not later than the seventh day after the date of the release. (Code Crim. Proc., Art. 60.08.)

Art. 66.253. COMPATIBILITY OF DATA. (a) Data supplied to the criminal justice information system must:

(1) be compatible with the system; and

(2) contain both incident numbers and state identification numbers.

(b) A discrete submission of information under this chapter must contain, in conjunction with the required information, the person's name and state identification number. (Code Crim. Proc., Art. 60.04.)

Art. 66.254. ELECTRONIC REPORTING OF INFORMATION. Whenever possible, information relating to dispositions and subsequent offender processing data shall be

reported electronically. (Code Crim. Proc., Art. 60.02(h).)

Art. 66.255. INFORMATION ON SUBSEQUENT ARRESTS. The Department of Public Safety and the Texas Department of Criminal Justice shall develop the capability to send by electronic means information about the subsequent arrest of a person under supervision to:

- (1) the community supervision and corrections department serving the court of original jurisdiction; or
- (2) the district parole office supervising the person. (Code Crim. Proc., Art. 60.18.)

SUBCHAPTER G. DUTIES OF CRIMINAL JUSTICE AGENCIES AND CERTAIN COURT CLERKS

Art. 66.301. DUTIES OF CRIMINAL JUSTICE AGENCIES. (a) Each criminal justice agency shall:

- (1) compile and maintain records needed for reporting data required by the Department of Public Safety and the Texas Department of Criminal Justice;
- (2) transmit to the Department of Public Safety and the Texas Department of Criminal Justice, when and in the manner each department directs, all data required by the appropriate department;
- (3) give the Department of Public Safety and the Texas Department of Criminal Justice, or the departments' accredited agents, access to the agency for the purpose of inspection to determine the completeness and accuracy of data reported;
- (4) cooperate with the Department of Public Safety and the Texas Department of Criminal Justice so that each department may properly and efficiently perform the department's duties under this chapter; and
- (5) cooperate with the Department of Public Safety and the Texas Department of Criminal Justice to identify and eliminate redundant reporting of information to the criminal justice information system.

(b) An optical disk or other technology may be used instead of microfilm as a medium to store information if allowed by the applicable state laws or rules relating to the archiving of state agency information. (Code Crim. Proc., Arts. 60.06(a), (d).)

Art. 66.302. PUBLIC DISCLOSURE NOT AUTHORIZED. (a) An individual's identifiable description or a notation of an individual's arrest, detention, indictment, information, or other formal criminal charge and of any disposition of the charge, including sentencing, correctional supervision, and release, that is collected and compiled by the Department of Public Safety or the Texas Department of Criminal Justice from criminal justice agencies and maintained in a central location is not subject to public disclosure except as authorized by federal or state law or regulation.

(b) Subsection (a) does not apply to a document maintained by a criminal justice agency that is the source of information collected by the Department of Public Safety or the Texas Department of Criminal Justice. Each criminal justice agency shall retain the documents described by this subsection. (Code Crim. Proc., Arts. 60.06(b), (c).)

Art. 66.303. PROHIBITED ACTS. An agency official may not intentionally conceal or destroy any record with the intent to violate this subchapter. (Code Crim. Proc., Art. 60.06(e).)

Art. 66.304. APPLICABILITY TO DISTRICT COURT AND COUNTY COURT CLERKS. The duties imposed on a criminal justice agency under this subchapter are also imposed on district court and county court clerks. (Code Crim. Proc., Art. 60.06(f).)

SUBCHAPTER H. OVERSIGHT AND REPORTING

Art. 66.351. BIENNIAL PLANS. The Department of Public Safety and the Texas Department of Criminal Justice, with advice from the council and the Department of Information Resources, shall develop biennial plans to:

- (1) improve the reporting and accuracy of the criminal justice information system; and

(2) develop and maintain monitoring systems capable of identifying missing information. (Code Crim. Proc., Art. 60.02(i).)

Art. 66.352. EXAMINATION OF RECORDS AND OPERATIONS. (a) At least once during each five-year period, the council shall coordinate an examination of the records and operations of the criminal justice information system to ensure:

- (1) the accuracy and completeness of information in the system; and
- (2) the promptness of information reporting.

(b) The state auditor or other appropriate entity selected by the council shall conduct the examination under Subsection (a) with the cooperation of the council, the Department of Public Safety, and the Texas Department of Criminal Justice.

(c) The council, the Department of Public Safety, and the Texas Department of Criminal Justice may examine the records of the agencies required to report information to the Department of Public Safety or the Texas Department of Criminal Justice.

(d) The examining entity under Subsection (b) shall submit to the legislature and the council a report that summarizes the findings of each examination and contains recommendations for improving the criminal justice information system.

(e) Not later than the first anniversary of the date the examining entity under Subsection (b) submits a report under Subsection (d), the Department of Public Safety shall report to the Legislative Budget Board, the governor, and the council the department's progress in implementing the examining entity's recommendations, including the reason for not implementing any recommendation.

(f) Each year following the submission of the report described by Subsection (e), the Department of Public Safety shall submit a similar report until each of the examining entity's recommendations is implemented.

(g) Notwithstanding any other provision of this article, work performed under this article by the state auditor is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code. (Code Crim. Proc., Arts. 60.02(j), (m).)

Art. 66.353. MONITORING AND REPORTING DUTIES OF DEPARTMENT OF PUBLIC SAFETY. (a) The Department of Public Safety shall:

- (1) monitor the submission of arrest and disposition information by local jurisdictions;
- (2) annually submit to the Legislative Budget Board, the governor, the lieutenant governor, the state auditor, and the standing committees in the senate and house of representatives with primary jurisdiction over criminal justice and the department a report regarding the level of reporting by local jurisdictions;
- (3) identify local jurisdictions that do not report arrest or disposition information or that partially report information; and
- (4) for use in determining the status of outstanding dispositions, publish monthly on the department's Internet website or in another electronic publication a report listing by local jurisdiction each arrest for which there is no corresponding final court disposition.

(b) The report described by Subsection (a)(2) must contain a disposition completeness percentage for each county in this state. For purposes of this subsection, "disposition completeness percentage" means the percentage of arrest charges a county reports to the Department of Public Safety, to be entered in the computerized criminal history system under this chapter, that were brought against a person in the county and for which a disposition has been subsequently reported and entered in the computerized criminal history system. (Code Crim. Proc., Arts. 60.21(b), (c).)

Art. 66.354. LOCAL DATA ADVISORY BOARDS. (a) The commissioners court of each county may create a local data advisory board to:

- (1) analyze the structure of local automated and manual data systems to identify redundant data entry and data storage;
- (2) develop recommendations for the commissioners to improve the local data systems;

(3) develop recommendations, when appropriate, for the effective electronic transfer of required data from local agencies to state agencies; and

(4) perform any related duties to be determined by the commissioners court.

(b) Local officials responsible for collecting, storing, reporting, and using data may be appointed to a local data advisory board.

(c) The council and the Department of Public Safety shall, to the extent that resources allow, provide technical assistance and advice on the request of a local data advisory board. (Code Crim. Proc., Art. 60.09.)

SUBCHAPTER I. GRANTS

Art. 66.401. GRANTS FOR CRIMINAL JUSTICE PROGRAMS. The council, the Department of Public Safety, the criminal justice division of the governor's office, and the Department of Information Resources cooperatively shall develop and adopt a grant program, to be implemented by the criminal justice division at a time and in a manner determined by the division, to aid local law enforcement agencies, prosecutors, and court personnel in obtaining equipment and training necessary to operate a telecommunications network capable of:

(1) making inquiries to and receiving responses from the statewide automated fingerprint identification system and from the computerized criminal history system; and

(2) transmitting information to those systems. (Code Crim. Proc., Art. 60.02(k).)

Art. 66.402. CERTIFICATION REQUIRED. Before allocating money to a county from any federal or state grant program for the enhancement of criminal justice programs, an agency of the state must certify that, using all or part of the allocated money, the county has taken or will take all action necessary to provide the Department of Public Safety and the Texas Department of Criminal Justice any criminal history records maintained by the county in the manner specified for purposes of those departments. (Code Crim. Proc., Art. 60.14.)

SECTION 1.04. Title 1, Code of Criminal Procedure, is amended by adding Chapter 67 to read as follows:

CHAPTER 67. COMPILATION OF INFORMATION PERTAINING TO COMBINATIONS AND CRIMINAL STREET GANGS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 67.001. DEFINITIONS

SUBCHAPTER B. INTELLIGENCE DATABASES

Art. 67.051. INTELLIGENCE DATABASES REQUIRED

Art. 67.052. DEPARTMENT INTELLIGENCE DATABASE

Art. 67.053. INTELLIGENCE DATABASE USER TRAINING; RULES

Art. 67.054. SUBMISSION CRITERIA

SUBCHAPTER C. RELEASE AND USE OF INFORMATION

Art. 67.101. RELEASE AND USE OF INFORMATION

Art. 67.102. CRIMINAL INFORMATION RELATING TO CHILD

Art. 67.103. UNAUTHORIZED RELEASE OR USE OF CRIMINAL INFORMATION; PENALTY

SUBCHAPTER D. REMOVAL OF INFORMATION

Art. 67.151. REMOVAL OF INFORMATION RELATING TO INDIVIDUAL OTHER THAN CHILD

Art. 67.152. REMOVAL OF INFORMATION RELATING TO CHILD

SUBCHAPTER E. RIGHTS OF SUBJECT OF CRIMINAL INFORMATION

- Art. 67.201. RIGHT TO REQUEST EXISTENCE OF CRIMINAL INFORMATION**
- Art. 67.202. RIGHT TO REQUEST REVIEW OF CRIMINAL INFORMATION**
- Art. 67.203. JUDICIAL REVIEW**

SUBCHAPTER F. GANG RESOURCE SYSTEM

- Art. 67.251. ESTABLISHMENT OF GANG RESOURCE SYSTEM**
- Art. 67.252. INFORMATION INCLUDED IN GANG RESOURCE SYSTEM**
- Art. 67.253. INCLUSION OF CERTAIN INFORMATION PROHIBITED**
- Art. 67.254. COLLECTION OF INFORMATION**
- Art. 67.255. USE OF INFORMATION**
- Art. 67.256. ACCESS TO INFORMATION**

SUBCHAPTER G. TEXAS VIOLENT GANG TASK FORCE

- Art. 67.301. DEFINITION**
- Art. 67.302. PURPOSE**
- Art. 67.303. TASK FORCE MEMBERS**
- Art. 67.304. DUTIES OF TASK FORCE**
- Art. 67.305. DUTIES OF DEPARTMENT REGARDING TASK FORCE**

**CHAPTER 67. COMPILATION OF INFORMATION PERTAINING TO
COMBINATIONS AND CRIMINAL STREET GANGS**

SUBCHAPTER A. GENERAL PROVISIONS

Art. 67.001. DEFINITIONS. In this chapter:

- (1) "Administration of criminal justice" has the meaning assigned by Article 66.001.
- (2) "Child" has the meaning assigned by Section 51.02, Family Code.
- (3) "Combination" has the meaning assigned by Section 71.01, Penal Code.
- (4) "Criminal activity" means conduct that is subject to prosecution.
- (5) "Criminal information" means facts, material, photographs, or data reasonably related to the investigation or prosecution of criminal activity.
- (6) "Criminal justice agency" means:
 - (A) an entity defined as a criminal justice agency under Article 66.001; or
 - (B) a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order.
- (7) "Criminal street gang" has the meaning assigned by Section 71.01, Penal Code.
- (8) "Department" means the Department of Public Safety of the State of Texas.
- (9) "Intelligence database" means a collection or compilation of data organized for search and retrieval to evaluate, analyze, disseminate, or use intelligence information relating to a combination or criminal street gang for the purpose of investigating or prosecuting a criminal offense.
- (10) "Juvenile justice agency" has the meaning assigned by Section 58.101, Family Code.
- (11) "Law enforcement agency" does not include the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, or a local juvenile probation department. (Code Crim. Proc., Art. 61.01.)

SUBCHAPTER B. INTELLIGENCE DATABASES

Art. 67.051. INTELLIGENCE DATABASES REQUIRED. (a) Subject to Subsection

(b), a criminal justice agency or juvenile justice agency shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of combinations or criminal street gangs.

(b) A law enforcement agency in a municipality with a population of 50,000 or more or in a county with a population of 100,000 or more shall compile and maintain in a local or regional intelligence database criminal information relating to a criminal street gang as provided by Subsection (a). The agency must compile and maintain the information in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Article 67.054(b).

(c) Information described by this article may be compiled on paper, by computer, or in any other useful manner by a criminal justice agency, juvenile justice agency, or law enforcement agency.

(d) A local law enforcement agency described by Subsection (b) shall send to the department information the agency compiles and maintains under this chapter. (Code Crim. Proc., Arts. 61.02(a), (b), (b-1), 61.03(c).)

Art. 67.052. DEPARTMENT INTELLIGENCE DATABASE. (a) The department shall establish an intelligence database and shall maintain information received from an agency under Article 67.051(d) in the database in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria under Article 67.054(b).

(b) The department shall designate a code to distinguish criminal information relating to a child and contained in the department's intelligence database from criminal information relating to an adult offender and contained in the database. (Code Crim. Proc., Arts. 61.02(b) (part), 61.03(d), (e).)

Art. 67.053. INTELLIGENCE DATABASE USER TRAINING; RULES. (a) The department shall enter into a memorandum of understanding with the United States Department of Justice or other appropriate federal department or agency to provide any person in this state who enters information into or retrieves information from an intelligence database described by this chapter with training regarding the operating principles described by 28 C.F.R. Part 23, as those principles relate to an intelligence database established or maintained under this chapter.

(b) A person in this state who enters information into or retrieves information from an intelligence database described by this chapter shall complete continuing education training on the material described by Subsection (a) at least once for each continuous two-year period the person has primary responsibility for performing a function described by this subsection.

(c) The department shall adopt rules necessary to implement this article. (Code Crim. Proc., Art. 61.12.)

Art. 67.054. SUBMISSION CRITERIA. (a) In this article:

(1) "Family member" means a person related to another person within the third degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Section 573.024(b), Government Code.

(2) "Penal institution" means:

(A) a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice;

(B) a confinement facility operated by or under contract with the Texas Juvenile Justice Department;

(C) a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department; or

(D) a county jail.

(b) Criminal information collected under this chapter relating to a criminal street gang must:

(1) be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity; and

(2) consist of:

(A) a judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang;

(B) a self-admission by an individual of criminal street gang membership that is made during a judicial proceeding; or

(C) except as provided by Subsection (c), any two of the following:

(i) a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet or other electronic format or medium to post photographs or other documentation identifying the individual as a member of a criminal street gang;

(ii) an identification of the individual as a criminal street gang member by a reliable informant or other individual;

(iii) a corroborated identification of the individual as a criminal street gang member by an informant or other individual of unknown reliability;

(iv) evidence that the individual frequents a documented area of a criminal street gang and associates with known criminal street gang members;

(v) evidence that the individual uses, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of how or the means by which the symbols are displayed, that are associated with a criminal street gang that operates in an area frequented by the individual and described by Subparagraph (iv);

(vi) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity;

(vii) evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution; or

(viii) evidence of the individual's use of technology, including the Internet, to recruit new criminal street gang members.

(c) Evidence described by Subsections (b)(2)(C)(iv) and (vii) is not sufficient to create the eligibility of a person's information to be included in an intelligence database described by this chapter unless the evidence is combined with information described by another subparagraph of Subsection (b)(2)(C). (Code Crim. Proc., Arts. 61.02(c), (d), (e).)

SUBCHAPTER C. RELEASE AND USE OF INFORMATION

Art. 67.101. RELEASE AND USE OF INFORMATION. (a) On request, a criminal justice agency may release information maintained under this chapter to:

(1) another criminal justice agency;

(2) a court; or

(3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

(b) A criminal justice agency or court may use information received under this article or Article 67.051(d) or 67.052 only for the administration of criminal justice.

(c) A defendant may use information received under this article or Article 67.051(d) or 67.052 only for a defense in a criminal proceeding. (Code Crim. Proc., Arts. 61.03(a), (b).)

Art. 67.102. CRIMINAL INFORMATION RELATING TO CHILD. (a) Notwithstanding Chapter 58, Family Code, criminal information relating to a child associated with a

combination or criminal street gang may be compiled and released under this chapter regardless of the age of the child.

(b) A criminal justice agency or juvenile justice agency may release information maintained under this chapter to an attorney representing a child who is a party to a proceeding under Title 3, Family Code, if the juvenile court determines the information:

- (1) is material to the proceeding; and
- (2) is not privileged under law.

(c) An attorney may use information received under this article only for a child's defense in a proceeding under Title 3, Family Code.

(d) The governing body of a county or municipality served by a law enforcement agency described by Article 67.051(b) may adopt a policy to notify the parent or guardian of a child of the agency's observations relating to the child's association with a criminal street gang. (Code Crim. Proc., Art. 61.04.)

Art. 67.103. UNAUTHORIZED RELEASE OR USE OF CRIMINAL INFORMATION; PENALTY. (a) A person commits an offense if the person knowingly:

- (1) uses criminal information obtained under this chapter for an unauthorized purpose; or
- (2) releases the information to a person who is not entitled to the information.

(b) An offense under this article is a Class A misdemeanor. (Code Crim. Proc., Art. 61.05.)

SUBCHAPTER D. REMOVAL OF INFORMATION

Art. 67.151. REMOVAL OF INFORMATION RELATING TO INDIVIDUAL OTHER THAN CHILD. (a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed after five years from an intelligence database established under Article 67.051 and the intelligence database maintained by the department under Article 67.052 if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by an individual other than a child; and

(2) the individual who is the subject of the information has not been arrested for criminal activity reported to the department under Chapter 66.

(c) The five-year period described by Subsection (b) does not include any period during which the individual who is the subject of the information is:

(1) confined in a correctional facility operated by or under contract with the Texas Department of Criminal Justice;

(2) committed to a secure correctional facility, as defined by Section 51.02, Family Code, operated by or under contract with the Texas Juvenile Justice Department; or

(3) confined in a county jail or confined in or committed to a facility operated by a juvenile board in lieu of being confined in a correctional facility described by Subdivision (1) or committed to a secure correctional facility described by Subdivision (2). (Code Crim. Proc., Art. 61.06.)

Art. 67.152. REMOVAL OF INFORMATION RELATING TO CHILD. (a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed after two years from an intelligence database established under Article 67.051 and the intelligence database maintained by the department under Article 67.052 if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by a child; and

- (2) the child who is the subject of the information has not been:
 - (A) arrested for criminal activity reported to the department under Chapter 66; or
 - (B) taken into custody for delinquent conduct reported to the department under Chapter 58, Family Code.
- (c) The two-year period described by Subsection (b) does not include any period during which the child who is the subject of the information is:
 - (1) committed to the Texas Juvenile Justice Department for conduct that violates a penal law of the grade of felony; or
 - (2) confined in the Texas Department of Criminal Justice. (Code Crim. Proc., Art. 61.07.)

SUBCHAPTER E. RIGHTS OF SUBJECT OF CRIMINAL INFORMATION

Art. 67.201. RIGHT TO REQUEST EXISTENCE OF CRIMINAL INFORMATION.

(a) A person or the parent or guardian of a child may request that a law enforcement agency determine whether the agency has collected or is maintaining, under submission criteria established under Article 67.054(b), criminal information relating solely to the person or child. The law enforcement agency shall respond to the request not later than the 10th business day after the date the agency receives the request.

(b) Before responding to a request under Subsection (a), a law enforcement agency may require reasonable written verification of the identity of the person making the request and the relationship between the parent or guardian and the child, if applicable, including written verification of an address, date of birth, driver's license number, state identification card number, or social security number. (Code Crim. Proc., Art. 61.075.)

Art. 67.202. RIGHT TO REQUEST REVIEW OF CRIMINAL INFORMATION.

(a) On receipt of a written request of a person or the parent or guardian of a child that includes a showing by the person or the parent or guardian that a law enforcement agency may have collected criminal information under this chapter relating to the person or child that is inaccurate or does not comply with the submission criteria under Article 67.054(b), the head of the agency or the designee of the agency head shall review criminal information collected by the agency under this chapter relating to the person or child to determine if:

- (1) reasonable suspicion exists to believe that the information is accurate; and
- (2) the information complies with the submission criteria established under Article 67.054(b).

(b) If, after conducting a review of criminal information under Subsection (a), the agency head or designee determines that reasonable suspicion does not exist to believe that the information is accurate, or determines that the information does not comply with the submission criteria, the agency shall:

- (1) destroy all records containing the information; and
- (2) notify the department and the person who requested the review of the agency's determination and the destruction of the records.

(c) If, after conducting a review of criminal information under Subsection (a), the agency head or designee determines that reasonable suspicion exists to believe that the information is accurate, and determines that the information complies with the submission criteria, the agency shall notify the person who requested the review:

- (1) of the agency's determination; and
- (2) that the person is entitled to seek judicial review of the agency's determination under Article 67.203.

(d) On receipt of notice under Subsection (b)(2), the department immediately shall destroy all records containing the information that is the subject of the notice in the intelligence database maintained by the department under Article 67.052.

(e) A person who is committed to the Texas Juvenile Justice Department or confined

in the Texas Department of Criminal Justice does not, while committed or confined, have the right to request review of criminal information under this article. (Code Crim. Proc., Art. 61.08.)

Art. 67.203. JUDICIAL REVIEW. (a) A person who is entitled to seek judicial review of a determination made under Article 67.202(c) may file a petition for review in district court in the county in which the person resides.

(b) On the filing of a petition for review under Subsection (a), the district court shall conduct an in camera review of the criminal information that is the subject of the determination to determine if:

- (1) reasonable suspicion exists to believe that the information is accurate; and
- (2) the information complies with the submission criteria under Article 67.054(b).

(c) If, after conducting an in camera review of criminal information under Subsection (b), the court finds that reasonable suspicion does not exist to believe that the information is accurate, or finds that the information does not comply with the submission criteria, the court shall:

- (1) order the law enforcement agency that collected the information to destroy all records containing the information; and
- (2) notify the department of the court's determination and the destruction of the records.

(d) A petitioner may appeal a final judgment of a district court conducting an in camera review under this article.

(e) Information that is the subject of an in camera review under this article is confidential and may not be disclosed. (Code Crim. Proc., Art. 61.09.)

SUBCHAPTER F. GANG RESOURCE SYSTEM

Art. 67.251. ESTABLISHMENT OF GANG RESOURCE SYSTEM. The office of the attorney general shall establish an electronic gang resource system to provide criminal justice agencies and juvenile justice agencies with information about criminal street gangs in this state. (Code Crim. Proc., Art. 61.11(a) (part).)

Art. 67.252. INFORMATION INCLUDED IN GANG RESOURCE SYSTEM. (a) The gang resource system established under Article 67.251 may include the following information with regard to any gang:

- (1) gang name;
- (2) gang identifiers, such as colors used, tattoos, and clothing preferences;
- (3) criminal activities;
- (4) migration trends;
- (5) recruitment activities; and
- (6) a local law enforcement contact.

(b) Information in the gang resource system shall be accessible according to:

- (1) municipality or county; and
- (2) gang name.

(c) The office of the attorney general may coordinate with the Texas Department of Criminal Justice to include information in the gang resource system regarding groups that have been identified by the Security Threat Group Management Office of the Texas Department of Criminal Justice. (Code Crim. Proc., Arts. 61.11(a) (part), (g), (h).)

Art. 67.253. INCLUSION OF CERTAIN INFORMATION PROHIBITED. Information relating to the identity of a specific offender or alleged offender may not be maintained in the gang resource system. (Code Crim. Proc., Art. 61.11(d).)

Art. 67.254. COLLECTION OF INFORMATION. (a) On request by the office of the attorney general, a criminal justice agency or juvenile justice agency shall make a rea-

sonable attempt to provide gang information to the office of the attorney general for the purpose of maintaining an updated, comprehensive gang resource system.

(b) The office of the attorney general shall cooperate with criminal justice agencies and juvenile justice agencies in collecting and maintaining the accuracy of the information included in the gang resource system. (Code Crim. Proc., Arts. 61.11(b), (c).)

Art. 67.255. **USE OF INFORMATION.** Information in the gang resource system may be used in investigating gang-related crimes. Information from the system may be included in an affidavit or subpoena or used in connection with any other legal or judicial proceeding only if the information is corroborated by information not provided by or maintained in the system. (Code Crim. Proc., Art. 61.11(e).)

Art. 67.256. **ACCESS TO INFORMATION.** Access to the gang resource system shall be limited to criminal justice agency personnel and juvenile justice agency personnel. (Code Crim. Proc., Art. 61.11(f).)

SUBCHAPTER G. TEXAS VIOLENT GANG TASK FORCE

Art. 67.301. **DEFINITION.** In this subchapter, "task force" means the Texas Violent Gang Task Force. (Code Crim. Proc., Art. 61.10(a).)

Art. 67.302. **PURPOSE.** The purpose of the task force is to form a strategic partnership among local, state, and federal criminal justice, juvenile justice, and correctional agencies to better enable those agencies to take a proactive stance toward tracking gang activity and the growth and spread of gangs statewide. (Code Crim. Proc., Art. 61.10(b).)

Art. 67.303. **TASK FORCE MEMBERS.** The task force shall consist of:

- (1) a representative of the department designated by the director of the department;
- (2) two representatives of the Texas Department of Criminal Justice, including a representative of the parole division, designated by the executive director of that agency;
- (3) a representative of the office of the inspector general of the Texas Department of Criminal Justice designated by the inspector general;
- (4) two representatives of the Texas Juvenile Justice Department designated by the executive director of that agency;
- (5) a representative of the office of the attorney general designated by the attorney general;
- (6) six representatives who are local law enforcement officers or local community supervision personnel, including juvenile probation personnel, designated by the governor;
- (7) two representatives who are local prosecutors designated by the governor; and
- (8) a representative of the Texas Alcoholic Beverage Commission designated by the executive director of that agency. (Code Crim. Proc., Art. 61.10(f).)

Art. 67.304. **DUTIES OF TASK FORCE.** (a) The task force shall focus its efforts on:

- (1) developing, through regional task force meetings, a statewide networking system that will provide timely access to gang information;
- (2) establishing communication between different criminal justice, juvenile justice, and correctional agencies, combining independent agency resources, and joining agencies together in a cooperative effort to focus on gang membership, gang activity, and gang migration trends; and
- (3) forming a working group of criminal justice, juvenile justice, and correctional representatives from throughout this state to discuss specific cases and investigations involving gangs and other related gang activities.

(b) The task force may take any other actions necessary to accomplish the purposes of this subchapter.

(c) If practicable, the task force shall consult with representatives from one or more United States attorneys' offices in this state and with representatives from the following federal agencies who are available and assigned to a duty station in this state:

- (1) the Federal Bureau of Investigation;
- (2) the Federal Bureau of Prisons;
- (3) the United States Drug Enforcement Administration;
- (4) United States Immigration and Customs Enforcement;
- (5) United States Customs and Border Protection;
- (6) the Bureau of Alcohol, Tobacco, Firearms and Explosives;
- (7) the United States Marshals Service; and
- (8) the United States Probation and Pretrial Services System. (Code Crim. Proc., Arts. 61.10(c), (d), (g).)

Art. 67.305. DUTIES OF DEPARTMENT REGARDING TASK FORCE. The department shall support the task force to assist in coordinating statewide antigang initiatives. (Code Crim. Proc., Art. 61.10(e).)

ARTICLE 2. CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND 18.21, CODE OF CRIMINAL PROCEDURE: CHAPTER 16, PENAL CODE

SECTION 2.01. Sections 16.02(a), (b), (c), (d), (e), and (e-1), Penal Code, are amended to read as follows:

(a) In this section:

(1) "*Communication* [~~,"computer trespasser,"~~ "*covert entry*," "*communication*] *common carrier*," "*computer trespasser*," "*contents*," "*covert entry*," "*electronic communication*," [~~"electronic, mechanical, or other device,"~~ "*immediate life-threatening situation*,"] "*intercept*," "*interception device*," "*investigative or law enforcement officer*," [~~"member of a law enforcement unit specially trained to respond to and deal with life-threatening situations,"~~] "*oral communication*," "*protected computer*," [~~"readily accessible to the general public,"~~] and "*wire communication*" have the meanings assigned by [~~given those terms in~~] Article 18A.001 [~~18.20~~], Code of Criminal Procedure.

(2) "*Immediate life-threatening situation*" and "*member of a law enforcement unit specially trained to respond to and deal with life-threatening situations*" have the meanings assigned by Article 18A.201, Code of Criminal Procedure.

(3) "*Readily accessible to the general public*" means, with respect to a radio communication, a communication that is not:

(A) *scrambled or encrypted;*

(B) *transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;*

(C) *carried on a subcarrier or other signal subsidiary to a radio transmission;*

(D) *transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication;*

(E) *transmitted on frequencies allocated under Part 25, Subpart D, E, or F of Part 74, or Part 94 of the rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; or*

(F) *an electronic communication.*

(b) A person commits an offense if the person:

(1) intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire, oral, or electronic communication;

(2) intentionally discloses or endeavors to disclose to another person the contents of a wire, oral, or electronic communication if the person knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(3) intentionally uses or endeavors to use the contents of a wire, oral, or electronic communication if the person knows or is reckless about whether the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire, oral, or electronic communications without court order or authorization; or

(5) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any *interception* [~~electronic, mechanical, or other~~] device to intercept any oral communication when the device:

(A) is affixed to, or otherwise transmits a signal through a wire, cable, or other connection used in wire communications; or

(B) transmits communications by radio or interferes with the transmission of communications by radio.

(c) It is an affirmative defense to prosecution under Subsection (b) that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire or electronic communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this section to intercept a wire, oral, or electronic communication;

(3) a person acting under color of law intercepts:

(A) a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;

(B) a wire, oral, or electronic communication, if the person is acting under the authority of *Chapter 18A* [~~Article 18-20~~], Code of Criminal Procedure; or

(C) a wire or electronic communication made by a computer trespasser and transmitted to, through, or from a protected computer, if:

(i) the interception did not acquire a communication other than one transmitted to or from the computer trespasser;

(ii) the owner of the protected computer consented to the interception of the computer trespasser's communications on the protected computer; and

(iii) the actor was lawfully engaged in an ongoing criminal investigation and the actor had reasonable suspicion to believe that the contents of the computer trespasser's communications likely to be obtained would be material to the investigation;

(4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:

(A) the person is a party to the communication; or

(B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;

(5) a person acting under color of law intercepts a wire, oral, or electronic communication if:

(A) oral or written consent for the interception is given by a magistrate before the interception;

- (B) an immediate life-threatening situation exists;
 - (C) the person is a member of a law enforcement unit specially trained to:
 - (i) respond to and deal with life-threatening situations; or
 - (ii) install *interception* [~~electronic, mechanical, or other~~] devices; and
 - (D) the interception ceases immediately on termination of the life-threatening situation;
- (6) an officer, employee, or agent of the Federal Communications Commission intercepts a communication transmitted by radio or discloses or uses an intercepted communication in the normal course of employment and in the discharge of the monitoring responsibilities exercised by the Federal Communications Commission in the enforcement of Chapter 5, Title 47, United States Code;
- (7) a person intercepts or obtains access to an electronic communication that was made through an electronic communication system that is configured to permit the communication to be readily accessible to the general public;
- (8) a person intercepts radio communication, other than a cordless telephone communication that is transmitted between a cordless telephone handset and a base unit, that is transmitted:
- (A) by a station for the use of the general public;
 - (B) to ships, aircraft, vehicles, or persons in distress;
 - (C) by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public, unless the radio communication is transmitted by a law enforcement representative to or from a mobile data terminal;
 - (D) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or
 - (E) by a marine or aeronautical communications system;
- (9) a person intercepts a wire or electronic communication the transmission of which causes harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference;
- (10) a user of the same frequency intercepts a radio communication made through a system that uses frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted; or
- (11) a provider of an electronic communications service records the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service towards the completion of the communication, or a user of that service from fraudulent, unlawful, or abusive use of the service.
- (d) A person commits an offense if the person:
- (1) intentionally manufactures, assembles, possesses, or sells an *interception* [~~electronic, mechanical, or other~~] device knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications and that the device or a component of the device has been or will be used for an unlawful purpose; or
 - (2) places in a newspaper, magazine, handbill, or other publication an advertisement of an *interception* [~~electronic, mechanical, or other~~] device:
 - (A) knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications;
 - (B) promoting the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications; or
 - (C) knowing or having reason to know that the advertisement will promote the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications.

(e) It is an affirmative defense to prosecution under Subsection (d) that the manufacture, assembly, possession, or sale of an *interception* ~~[electronic, mechanical, or other]~~ device that is designed primarily for the purpose of nonconsensual interception of wire, electronic, or oral communication is by:

(1) a communication common carrier or a provider of wire or electronic communications service or an officer, agent, or employee of or a person under contract with a communication common carrier or *service* provider acting in the normal course of the provider's or ~~[communication]~~ carrier's business;

(2) an officer, agent, or employee of a person under contract with, bidding on contracts with, or doing business with the United States or this state acting in the normal course of the activities of the United States or this state;

(3) a member of the Department of Public Safety who is specifically trained to install wire, oral, or electronic communications intercept equipment; or

(4) a member of a local law enforcement agency that has an established unit specifically designated to respond to and deal with life-threatening situations.

(e-1) It is a defense to prosecution under Subsection (d)(1) that the *interception* ~~[electronic, mechanical, or other]~~ device is possessed by a person authorized to possess the device under Section 500.008, Government Code, or Section 242.103, Human Resources Code.

SECTION 2.02. Sections 16.03(b) and (c), Penal Code, are amended to read as follows:

(b) In this section:

(1) "*Authorized*" ~~["authorized"]~~ peace officer," ~~["communications common carrier,"]~~ "pen register," and "trap and trace device" have the meanings assigned by Article 18B.001 ~~[18.21]~~, Code of Criminal Procedure.

(2) "*Communication common carrier*" has the meaning assigned by Article 18A.001, Code of Criminal Procedure.

(c) It is an affirmative defense to prosecution under Subsection (a) that the actor is:

(1) an officer, employee, or agent of a *communication* ~~[communications]~~ common carrier and the actor installs or uses a device or equipment to record a number dialed from or to a telephone instrument in the normal course of business of the carrier for purposes of:

(A) protecting property or services provided by the carrier; or

(B) assisting another who the actor reasonably believes to be a peace officer authorized to install or use a pen register or trap and trace device under *Chapter 18B* ~~[Article 18.21]~~, Code of Criminal Procedure;

(2) an officer, employee, or agent of a lawful enterprise and the actor installs or uses a device or equipment while engaged in an activity that:

(A) is a necessary incident to the rendition of service or to the protection of property of or services provided by the enterprise; and

(B) is not made for the purpose of gathering information for a law enforcement agency or private investigative agency, other than information related to the theft of communication or information services provided by the enterprise; or

(3) a person authorized to install or use a pen register or trap and trace device under *Chapter 18B* ~~[Article 18.21]~~, Code of Criminal Procedure.

SECTION 2.03. Sections 16.04(a) and (e), Penal Code, are amended to read as follows:

(a) In this section:

(1) "*Electronic*" ~~["electronic"]~~ communication," ~~["electronic storage,"]~~ "user," and "wire communication" have the meanings assigned by ~~[to those terms in]~~ Article 18A.001 ~~[18.21]~~, Code of Criminal Procedure.

(2) "*Electronic storage*" has the meaning assigned by Article 18B.001, Code of Criminal Procedure.

(e) It is an affirmative defense to prosecution under Subsection (b) that the conduct was authorized by:

- (1) the provider of the wire or electronic communications service;
- (2) the user of the wire or electronic communications service;
- (3) the addressee or intended recipient of the wire or electronic communication; or
- (4) *Chapter 18B* [~~Article 18.21~~], Code of Criminal Procedure.

SECTION 2.04. Section 16.05(a), Penal Code, is amended to read as follows:

(a) In this section, “electronic [~~communication,~~” “~~electronic~~] communications *service*” *has* [~~service,~~” and “~~electronic communications system~~” *have*] the *meaning assigned by* [~~meanings given those terms in~~] Article 18A.001 [~~18.20~~], Code of Criminal Procedure.

ARTICLE 3. OTHER CONFORMING AMENDMENTS FOR ARTICLES 18.20
AND 18.21, CODE OF CRIMINAL PROCEDURE

SECTION 3.01. Section 71.0083(b), Agriculture Code, is amended to read as follows:

(b) An agriculture warrant may be issued only by a magistrate authorized to issue a search warrant under Chapter 18, *18A*, or *18B*, Code of Criminal Procedure, only after the department has exercised reasonable efforts to obtain consent to conduct a search, and on application by the department accompanied by a supporting affidavit that establishes probable cause for the issuance of the warrant. The warrant must describe:

- (1) the street address and municipality or the parcel number and county of each place or premises subject to the warrant; and
- (2) each type of plant pest or disease that is the subject of the warrant.

SECTION 3.02. Section 123.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) “Interception” means the aural acquisition of the contents of a communication through the use of an *interception* [~~electronic, mechanical, or other~~] device that is made without the consent of a party to the communication, but does not include the ordinary use of:

- (A) a telephone or telegraph instrument or facility or telephone and telegraph equipment;
- (B) a hearing aid designed to correct subnormal hearing to not better than normal;
- (C) a radio, television, or other wireless receiver; or
- (D) a cable system that relays a public wireless broadcast from a common antenna to a receiver.

SECTION 3.03. Article 18.02(b), Code of Criminal Procedure, is amended to read as follows:

(b) For purposes of Subsection (a)(13):

(1) “*Electronic communication*” [~~“electronic communication,” “electronic storage,”~~] and “wire communication” have the meanings assigned by Article 18A.001.

(2) “*Electronic* [~~18.20, and “electronic~~] customer data” and “*electronic storage*” *have* [~~has~~] the *meanings* [~~meaning~~] assigned by Article 18B.001 [~~18.21~~].

SECTION 3.04. Article 18.0215(d), Code of Criminal Procedure, is amended to read as follows:

(d) Notwithstanding any other law, a peace officer may search a cellular telephone or other wireless communications device without a warrant if:

- (1) the owner or possessor of the telephone or device consents to the search;
- (2) the telephone or device is reported stolen by the owner or possessor; or
- (3) the officer reasonably believes that:

(A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or

(B) there exists an immediate life-threatening situation, as defined by ~~[Section 1-]~~ Article 18A.201 ~~[18-20]~~.

SECTION 3.05. Article 18.04, Code of Criminal Procedure, is amended to read as follows:

Art. 18.04. CONTENTS OF WARRANT. A search warrant issued under this chapter, *Chapter 18A*, or *Chapter 18B* shall be sufficient if it contains the following requisites:

- (1) that it run in the name of "The State of Texas";
- (2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;
- (3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named;
- (4) that it be dated and signed by the magistrate; and
- (5) that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

SECTION 3.06. Article 18.06(a), Code of Criminal Procedure, is amended to read as follows:

(a) A peace officer to whom a search warrant is delivered shall execute the warrant without delay and forthwith return the warrant to the proper magistrate. A search warrant issued under ~~[Section 5A,]~~ Article 18B.354 ~~[18-21,]~~ must be executed in the manner provided by Article 18B.355 ~~[that section]~~ not later than the 11th day after the date of issuance. In all other cases, a search warrant must be executed within three days from the time of its issuance. A warrant issued under this chapter, *Chapter 18A*, or *Chapter 18B* shall be executed within a shorter period if so directed in the warrant by the magistrate.

SECTION 3.07. Articles 18.07(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) The period allowed for the execution of a search warrant, exclusive of the day of its issuance and of the day of its execution, is:

- (1) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples;
- (2) 10 whole days if the warrant is issued under ~~[Section 5A,]~~ Article 18B.354 ~~[18-21]~~; or
- (3) three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).

(b) The magistrate issuing a search warrant under this chapter, *Chapter 18A*, or *Chapter 18B* shall endorse on the search warrant the date and hour of its issuance.

SECTION 3.08. Section 54.978(e), Government Code, is amended to read as follows:

(e) In this subsection, ~~["pen register,"]~~ "ESN reader," "pen register," and "trap and trace device" ~~[device," and "mobile tracking device"]~~ have the meanings assigned by Article 18B.001 ~~[Section 18-21]~~, Code of Criminal Procedure, and "mobile tracking device" has the meaning assigned by Article 18B.201, Code of Criminal Procedure. A magistrate may:

- (1) notwithstanding ~~[Section 2(a),]~~ Article 18B.051 or 18B.052 ~~[18-21]~~, Code of Criminal Procedure, issue an order under *Subchapter C*, *Chapter 18B* ~~[Section 2, Article 18-21]~~, Code of Criminal Procedure, for the installation and use of:

- (A) a pen register;
- (B) an ESN reader;
- (C) a trap and trace device; or
- (D) equipment that combines the function of a pen register and a trap and trace device;

(2) issue an order to obtain access to stored communications under ~~[Section 5,]~~ Article 18B.352 ~~[18.21]~~, Code of Criminal Procedure; and

(3) notwithstanding ~~[Section 14(a),]~~ Article 18B.203(a) ~~[18.21]~~, Code of Criminal Procedure, issue an order for the installation and use of a mobile tracking device under *Subchapter E, Chapter 18B* ~~[Section 14, Article 18.21]~~, Code of Criminal Procedure.

SECTION 3.09. Section 421.004, Government Code, is amended to read as follows:

Sec. 421.004. PROVISIONS GOVERNING MOBILE TRACKING DEVICES. In the event of a conflict between *Subchapter E, Chapter 18B* ~~[Section 14, Article 18.21]~~, Code of Criminal Procedure, and this chapter or a rule adopted under this chapter, *Subchapter E, Chapter 18B* ~~[Section 14, Article 18.21]~~, Code of Criminal Procedure, controls.

SECTION 3.10. Section 493.0191, Government Code, is amended to read as follows:

Sec. 493.0191. ADMINISTRATIVE SUBPOENAS. (a) The inspector general may issue an administrative subpoena to a *communication* ~~[communications]~~ common carrier or an electronic communications service provider to compel the production of the carrier's or service provider's business records that:

(1) disclose information about:

(A) the carrier's or service provider's customers; or

(B) users of the services offered by the carrier or service provider; and

(2) are material to a criminal investigation of an escape or a potential escape or a violation of Section 38.11, Penal Code.

(b) In this section:

(1) "*Communication* ~~[Communications]~~ common carrier" means a person that:

(A) for a fee, provides directly to the public or to certain members of the public the ability to transmit between or among points specified by the person who uses that ability, regardless of the technology used, information of the person's choosing without change in the form or content of the information transmitted; or

(B) is a provider that bills customers for services described by Paragraph (A).

(2) "Electronic communications service provider" means a service provider that provides to users of the service the ability to send or receive wire or electronic communications, as those terms are defined by Article 18A.001 ~~[18.20]~~, Code of Criminal Procedure.

SECTION 3.11. Sections 500.008(a) and (b), Government Code, are amended to read as follows:

(a) The department may own and the office of inspector general may possess, install, operate, or monitor an *interception* ~~[electronic, mechanical, or other]~~ device, as defined by Article 18A.001 ~~[18.20]~~, Code of Criminal Procedure.

(b) The inspector general shall designate in writing the commissioned officers of the office of inspector general who are authorized to possess, install, operate, and monitor *interception* ~~[electronic, mechanical, or other]~~ devices for the department.

SECTION 3.12. Section 242.841(2), Health and Safety Code, is amended to read as follows:

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in the room of a resident; and

(ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and

(B) does not include an *interception* ~~[electronic, mechanical, or other]~~ device that is specifically used for the nonconsensual interception of wire or electronic communications.

SECTION 3.13. Section 242.842(c), Health and Safety Code, is amended to read as follows:

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

- (1) an oral communication as defined by ~~[Section 1,]~~ Article 18A.001 ~~[18-20]~~, Code of Criminal Procedure; or
- (2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

SECTION 3.14. Section 555.151(2), Health and Safety Code, is amended to read as follows:

(2) "Electronic monitoring device":

(A) includes:

- (i) video surveillance cameras installed in a resident's room; and
- (ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an *interception* ~~[electronic, mechanical, or other]~~ device that is specifically used for the nonconsensual interception of wire or electronic communications.

SECTION 3.15. Section 555.152(c), Health and Safety Code, is amended to read as follows:

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

- (1) an oral communication as defined by ~~[Section 1,]~~ Article 18A.001 ~~[18-20]~~, Code of Criminal Procedure; or
- (2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

SECTION 3.16. Sections 242.103(a) and (b), Human Resources Code, are amended to read as follows:

(a) The department may own and the office of the inspector general may possess, install, operate, or monitor an *interception* ~~[electronic, mechanical, or other]~~ device, as defined by Article 18A.001 ~~[18-20]~~, Code of Criminal Procedure.

(b) The inspector general shall designate in writing the commissioned officers of the office of inspector general who are authorized to possess, install, operate, and monitor *interception* ~~[electronic, mechanical, or other]~~ devices for the department.

SECTION 3.17. Section 33.01(3), Penal Code, is amended to read as follows:

(3) "*Communication* ~~["Communications"]~~ common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

SECTION 3.18. Section 33.03, Penal Code, is amended to read as follows:

Sec. 33.03. DEFENSES. It is an affirmative defense to prosecution under Section 33.02 that the actor was an officer, employee, or agent of a *communication* ~~[communications]~~ common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the *communication* ~~[communications]~~ common carrier or electric utility.

SECTION 3.19. Section 38.11(k), Penal Code, is amended to read as follows:

(k) A person commits an offense if, with the intent to provide to or make a cellular

telephone or other wireless communications device or a component of one of those devices available for use by a person in the custody of a correctional facility, the person:

- (1) acquires a cellular telephone or other wireless communications device or a component of one of those devices to be delivered to the person in custody;
- (2) provides a cellular telephone or other wireless communications device or a component of one of those devices to another person for delivery to the person in custody; or
- (3) makes a payment to a communication common carrier, as defined by Article 18A.001 [18.20], Code of Criminal Procedure, or to any communication service that provides to its users the ability to send or receive wire or electronic communications.

ARTICLE 4. CONFORMING AMENDMENTS FOR CHAPTERS 60 AND 61,
CODE OF CRIMINAL PROCEDURE

SECTION 4.01. Article 2.021, Code of Criminal Procedure, is amended to read as follows:

Art. 2.021. DUTIES OF ATTORNEY GENERAL. The attorney general may offer to a county or district attorney the assistance of the attorney general's office in the prosecution of an offense described by Article 66.102(h) [60.051(g)] the victim of which is younger than 17 years of age at the time the offense is committed. On request of a county or district attorney, the attorney general shall assist in the prosecution of an offense described by Article 66.102(h) [60.051(g)] the victim of which is younger than 17 years of age at the time the offense is committed. For purposes of this article, assistance includes investigative, technical, and litigation assistance of the attorney general's office.

SECTION 4.02. Section 1, Article 42.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment shall reflect:

1. The title and number of the case;
2. That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or, where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;
3. The plea or pleas of the defendant to the offense charged;
4. Whether the case was tried before a jury or a jury was waived;
5. The submission of the evidence, if any;
6. In cases tried before a jury that the jury was charged by the court;
7. The verdict or verdicts of the jury or the finding or findings of the court;
8. In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;
9. In the event of conviction where death or any punishment is assessed that the defendant be sentenced to death, a term of confinement or community supervision, or to pay a fine, as the case may be;
10. In the event of conviction where the imposition of sentence is suspended and the defendant is placed on community supervision, setting forth the punishment assessed, the length of community supervision, and the conditions of community supervision;
11. In the event of acquittal that the defendant be discharged;
12. The county and court in which the case was tried and, if there was a change of venue in the case, the name of the county in which the prosecution was originated;

13. The offense or offenses for which the defendant was convicted;
14. The date of the offense or offenses and degree of offense for which the defendant was convicted;
15. The term of sentence;
16. The date judgment is entered;
17. The date sentence is imposed;
18. The date sentence is to commence and any credit for time served;
19. The terms of any order entered pursuant to Article 42.08 that the defendant's sentence is to run cumulatively or concurrently with another sentence or sentences;
20. The terms of any plea bargain;
21. Affirmative findings entered pursuant to Article 42A.054(c) or (d);
22. The terms of any fee payment ordered under Article 42.151;
23. The defendant's thumbprint taken in accordance with Article 38.33;
24. In the event that the judge orders the defendant to repay a reward or part of a reward under Articles 37.073 and 42.152, a statement of the amount of the payment or payments required to be made;
25. In the event that the court orders restitution to be paid to the victim, a statement of the amount of restitution ordered and:
 - (A) the name and address of a person or agency that will accept and forward restitution payments to the victim; or
 - (B) if the court specifically elects to have payments made directly to the crime victim, the name and permanent address of the victim at the time of judgment;
26. In the event that a presentence investigation is required by Subchapter F, Chapter 42A, a statement that the presentence investigation was done according to the applicable provision;
27. In the event of conviction of an offense for which registration as a sex offender is required under Chapter 62, a statement that the registration requirement of that chapter applies to the defendant and a statement of the age of the victim of the offense;
28. The defendant's state identification number required by Article 66.152(a)(2) [Section 60.052(a)(2)], if that number has been assigned at the time of the judgment; and
29. The incident number required by Article 66.152(a)(4) [Section 60.052(a)(4)], if that number has been assigned at the time of the judgment.

SECTION 4.03. Article 42A.507(a), Code of Criminal Procedure, is amended to read as follows:

(a) This article applies only to a defendant who:

- (1) is identified as a member of a criminal street gang in an intelligence database established under Chapter 67 [61]; and
- (2) has two or more times been previously convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of community supervision or probation for, a felony offense under the laws of this state, another state, or the United States.

SECTION 4.04. Section 3(b), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(b) The order of expunction entered by the court shall have attached and incorporate by reference a copy of the judgment of acquittal and shall include:

- (1) the following information on the person who is the subject of the expunction order:
 - (A) full name;
 - (B) sex;

- (C) race;
- (D) date of birth;
- (E) driver's license number; and
- (F) social security number;
- (2) the offense charged against the person who is the subject of the expunction order;
- (3) the date the person who is the subject of the expunction order was arrested;
- (4) the case number and court of offense; and
- (5) the tracking incident number (TRN) assigned to the individual incident of arrest under Article 66.251(b)(1) ~~[60.07(b)(1)]~~ by the Department of Public Safety.

SECTION 4.05. Section 58.111, Family Code, is amended to read as follows:

Sec. 58.111. LOCAL DATA ADVISORY BOARDS. The commissioners court of each county may create a local data advisory board to perform the same duties relating to the juvenile justice information system as the duties performed by a local data advisory board in relation to the criminal history record system under Article 66.354 ~~[60.09]~~, Code of Criminal Procedure.

SECTION 4.06. Section 58.202, Family Code, is amended to read as follows:

Sec. 58.202. EXEMPTED RECORDS. The following records are exempt from this subchapter:

- (1) sex offender registration records maintained by the department or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and
- (2) records relating to a criminal combination or criminal street gang maintained by the department or a local law enforcement agency under Chapter 67 ~~[61]~~, Code of Criminal Procedure.

SECTION 4.07. Section 411.048(a)(1), Government Code, is amended to read as follows:

- (1) "Criminal justice agency" has the meaning assigned by Article 66.001 ~~[60.01]~~, Code of Criminal Procedure.

SECTION 4.08. Section 411.048(g), Government Code, is amended to read as follows:

(g) An individual who is the subject of information collected under this section may request that the director, the director's designee, or a court review the information to determine whether the information complies with rules adopted by the director. The review shall be conducted using the same procedure for reviewing criminal information collected under Chapter 67 ~~[61]~~, Code of Criminal Procedure.

SECTION 4.09. Section 411.0601, Government Code, is amended to read as follows:

Sec. 411.0601. DEFINITION. In this subchapter, "criminal justice agency" has the meaning assigned by Article 66.001 ~~[60.01]~~, Code of Criminal Procedure.

SECTION 4.10. Section 411.082(1), Government Code, is amended to read as follows:

- (1) "Administration of criminal justice" has the meaning assigned by Article 66.001 ~~[60.01]~~, Code of Criminal Procedure.

SECTION 4.11. Section 493.0155, Government Code, is amended to read as follows:

Sec. 493.0155. PROPER IDENTIFICATION OF INMATES USING ALIAS. On receipt of information from the Department of Public Safety under Article 66.105 ~~[60.19]~~, Code of Criminal Procedure, that a person's identifying information may have been falsely used by an inmate as the inmate's identifying information, regardless of whether the inmate is in the custody of the department, is serving a period of supervised release, or has been discharged, the department shall:

- (1) make a reasonable effort to identify the inmate's actual identity; and
- (2) take action to ensure that any information maintained in the department's records and files regarding the inmate reflects the inmate's use of the person's identity

as a stolen alias and refers to available information concerning the inmate's actual identity.

SECTION 4.12. Section 508.227(a), Government Code, is amended to read as follows:

(a) This section applies only to a releasee who:

(1) is identified as a member of a criminal street gang in an intelligence database established under Chapter 67 [61], Code of Criminal Procedure; and

(2) has three or more times been convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of community supervision or probation for, a felony offense under the laws of this state, another state, or the United States.

SECTION 4.13. Section 509.004(b), Government Code, is amended to read as follows:

(b) The division shall develop an automated tracking system that:

(1) is capable of receiving tracking data from community supervision and corrections departments' caseload management and accounting systems;

(2) is capable of tracking the defendant and the sentencing event at which the defendant was placed on community supervision by name, arrest charge code, and incident number;

(3) provides the division with the statistical data it needs to support budget requests and satisfy requests for information; and

(4) is compatible with the requirements of Chapter 66 [60], Code of Criminal Procedure, and the information systems used by the institutional division and the pardons and paroles division of the Texas Department of Criminal Justice.

SECTION 4.14. Section 244.003(b), Human Resources Code, is amended to read as follows:

(b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 244.051 of this code, and Chapter 67 [61], Code of Criminal Procedure.

SECTION 4.15. Section 109.001(1), Occupations Code, is amended to read as follows:

(1) "Administration of criminal justice" and "criminal justice agency" have the meanings assigned by Article 66.001 [60.01], Code of Criminal Procedure.

SECTION 4.16. Section 160.101(b), Occupations Code, is amended to read as follows:

(b) Not later than the 30th day after the date a person described by Subsection (a) is convicted of an offense listed in that subsection or is placed on deferred adjudication for an offense listed in that subsection, the clerk of the court in which the person is convicted or placed on deferred adjudication shall prepare and forward to the Department of Public Safety the information required by Chapter 66 [60], Code of Criminal Procedure.

SECTION 4.17. Section 521.061(e), Transportation Code, is amended to read as follows:

(e) In this section, "criminal justice agency" has the meaning assigned by Article 66.001 [60.01], Code of Criminal Procedure.

ARTICLE 5. REPEALER

SECTION 5.01. The following provisions of the Code of Criminal Procedure are repealed:

- (1) Article 18.20;
- (2) Article 18.21;
- (3) Chapter 60; and
- (4) Chapter 61.

ARTICLE 6. GENERAL MATTERS

SECTION 6.01. This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a codification only, and no substantive change in the law is intended by this Act.

SECTION 6.02. (a) Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in the Code of Criminal Procedure that is enacted under Section 43, Article III, Texas Constitution (authorizing the continuing statutory revision program), in the same manner as to a code enacted under the continuing statutory revision program, except as otherwise expressly provided by the Code of Criminal Procedure.

(b) A reference in a law to a statute or a part of a statute in the Code of Criminal Procedure enacted under Section 43, Article III, Texas Constitution (authorizing the continuing statutory revision program), is considered to be a reference to the part of that code that revises that statute or part of that statute.

SECTION 6.03. This Act takes effect January 1, 2019.

Passed by the House on May 3, 2017: Yeas 144, Nays 0, 2 present, not voting; passed by the Senate on May 24, 2017: Yeas 31, Nays 0.

Approved June 15, 2017.

Effective January 1, 2019.

**DRIVER'S AND LEARNER LICENSES AND THE ISSUANCE OF
CERTAIN DRIVER'S LICENSES AND IDENTIFICATION
CERTIFICATES; AUTHORIZING A FEE**

CHAPTER 1059

H.B. No. 3050

AN ACT

relating to driver's and learner licenses and the issuance of certain driver's licenses and identification certificates; authorizing a fee.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 521.001(a)(3), Transportation Code, is amended to read as follows:

(3) "Driver's license" means an authorization issued by the department for the operation of a motor vehicle. The term includes:

- (A) a temporary license or *learner license* ~~[instruction permit]~~; and
- (B) an occupational license.

SECTION 2. Sections 521.009(a), (a-1), and (c), Transportation Code, are amended to read as follows:

(a) The department may establish a program for the provision of renewal and duplicate driver's license, election identification certificate, and personal identification certificate services in counties *and municipalities* that enter into an agreement with the department under Subsection (a-1).

(a-1) Under the program, the department may enter into an agreement with the commissioners court of a county *or the governing body of a municipality* to permit county *or municipal* employees to provide services at a county *or municipal* office relating to the issuance of renewal and duplicate driver's licenses, election identification certificates, and personal identification certificates, including:

- (1) taking photographs;
- (2) administering vision tests;